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CUMULATIVE SUPPLEMENT

TO

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1972 ANNOTATED

Issued December 2020

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ENACTED THROUGH THE 2020 REGULAR SESSION

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

There are no new sections added in this supplement.

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MISSISSIPPI CODE
1972
ANNOTATED

VOLUME EIGHTEEN

TITLE 79.

CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

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CHAPTER 4.

MISSISSIPPI BUSINESS CORPORATION ACT

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ARTICLE 1.

GENERAL PROVISIONS.

Subarticle B.	Filing Documents.	79-4-1.20

SUBARTICLE B.

FILING DOCUMENTS.

Sec.

79-4-1.22. Filing service and copying fees; discounts; expedited filing service.

§ 79-4-1.22. Filing service and copying fees; discounts; expedited filing service.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation	$ 50.00
(2) [Reserved]	
(3) Application for reserved name	25.00
(4) Notice of transfer or cancellation of reserved name	25.00
(5) [Reserved]	
(6) [Reserved]	
(7) [Reserved]	
(8) [Reserved]	
(9) [Reserved]	
(10) Amendment of articles of Incorporation	50.00
(11) Restatement of articles of incorporation	50.00
with amendment of articles	50.00
(12) Articles of merger or share exchange	50.00
(13) Articles of dissolution	25.00
(14) Articles of revocation of dissolution	25.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	50.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	500.00
(20) Application for amended certificate of authority	50.00
(21) Application for certificate of withdrawal	25.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Application for reinstatement following administrative revocation	100.00
(24) Certificate of reinstatement	No fee
(25) Annual report	25.00
(26) Articles of correction	50.00
(27) Application for certificate of existence or authorization	25.00
(28) Any other document required or permitted to be filed by Section 79-4-1.01 et seq.	25.00

(b) The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) each time process is served on him under Section 79-4-1.01 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) One Dollar ($1.00) a page for copying; and

(2) Ten Dollars ($10.00) for the certificate.

(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to:

(1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars ($25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

HISTORY: Laws, 1987, ch. 486, § 1.22; Laws, 1991, ch. 509, § 6; Laws, 1994, ch. 536, § 1; Laws, 2009, ch. 530, § 1; Laws, 2010, ch. 375, § 1; Laws, 2012, ch. 382, § 21; Laws, 2012, ch. 481, § 1; Laws, 2014, ch. 468, § 5, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (2), substituted "[Reserved]" for "Application for use of indistinguishable name . . . 25.00"; in (5), substituted "[Reserved]" for "Application for registered name . . . 50.00"; and in (6), substituted "[Reserved]" for "Application for renewal of registered name . . . 50.00."

SUBARTICLE D.

DEFINITIONS.

§ 79-4-1.43. Qualified director.

JUDICIAL DECISIONS

1. Special committee.

Because plaintiff did not allege with particularity facts establishing that the members of a special committee were not qualified, dismissal of plaintiff's derivative action was appropriate. Burgess v. Patterson, 188 So. 3d 537, 2016 Miss. LEXIS 154 (Miss. 2016).

ARTICLE 2.

INCORPORATION.

Sec.
79-4-2.02. Articles of incorporation.

§ 79-4-2.02. Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;

(2) The number of shares the corporation is authorized to issue and any

information concerning the authorized shares as required by Section 79-4-6.01;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; and

(iv) A par value for authorized shares or classes of shares;

(3) Any provision that under Section 79-4-1.01 et seq. is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as defined in Section 79-4-8.50(5) to any person for any action taken, or any failure to take any action, as a director, except liability for:

(i) Receipt of a financial benefit to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or its shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law.

(6) A provision or reference to a provision in the corporation's bylaws that requires derivative proceedings under Section 79-4-7.41(1) or any other internal corporate claim that is based upon a current or former director's or officer's violation of a duty to be brought in the appropriate court of the county where the corporation's principal office is located, consistent with applicable law and jurisdictional requirements.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-1.01 et seq.

(d) For the purposes of this section, a "director" shall include any person vested with the discretion or powers of a director under Section 79-4-7.32.

(e) Provisions of the articles of incorporation may be made dependent

upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).

HISTORY: Laws, 1987, ch. 486, § 202; Laws, 1991, ch. 509, § 1; Laws, 1994, ch. 417, § 1; Laws, 1996, ch. 459 § 1; Laws, 2004, ch. 495, § 3; Laws, 2012, ch. 382, § 25; Laws, 2016, ch. 435, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (b)(6).

ARTICLE 3.

PURPOSES AND POWERS.

§ 79-4-3.02. General powers.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.

Chancellor erred in requiring a director to reimburse a corporation for a donation because by directing the donation, the director in his role as sole director was exercising a legitimate corporate power; while the record indicated the director in the past had also made additional corporate donations without consulting a shareholder, the evidence was not substantial enough to support a finding that the donation was a personal expense. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

ARTICLE 4.

NAME.

Sec.
79-4-4.02. Reserved name.
79-4-4.03. Repealed.

§ 79-4-4.02. Reserved name.

(a) A person may reserve the exclusive use of a legal corporate name that complies with Section 79-4-4.01, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. However, no person or corporation may reserve the name "In God We Trust" which name shall be reserved to the people of the State of Mississippi, as a symbol thereof. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a one-hundred-eighty-day period. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period.

(b) The owner of a reserved corporate name may transfer the reservation

to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(c) The reservation of a specified name may be cancelled by delivering to the Secretary of State a notice of cancellation, specifying the name of the reservation to be cancelled and the name and address of the owner or transferee.

(d) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(e) A fee as set forth in Section 79-4-1.22 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

HISTORY: Laws, 1987, ch. 486, § 4.02; Laws, 2012, ch. 481, § 7; Laws, 2014, ch. 468, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (a), inserted "legal" following "the exclusive use of a" and "that complies with Section 79-4-4.01" following "corporate name" in the first sentence; added the second and last sentences; substituted "the Secretary of State" for "he" and deleted "nonrenewable" following "applicant's exclusive use for a" in the third sentence; in (c), deleted "the Office of" following "cancelled by delivering to"; and in (e), deleted "(4)" near the beginning following "as set forth in Section 79-4-1.22."

§ 79-4-4.03. Repealed.

Repealed by Laws, 2014, ch. 468, § 9, effective from and after July 1, 2014.

§ 79-4-4.03. [Laws, 1987, ch. 486, § 4.03, eff from and after January 1, 1988.]

Editor's Notes — Former § 79-4-4.03 provided for the registration of corporate names.

ARTICLE 7.

SHAREHOLDERS.

Subarticle C. Voting Trusts and Agreements. 79-4-7.30

SUBARTICLE C.

VOTING TRUSTS AND AGREEMENTS.

Sec.

79-4-7.30. Voting trusts.

§ 79-4-7.30. Voting trusts.

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for the period specified in the trust agreement.

(c) All or some of the parties to a voting trust may extend it for additional terms by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for the period specified in the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

HISTORY: Laws, 1987, ch. 486, § 7.30; Laws, 2017, ch. 369, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment rewrote the second sentence of (b), which read: "A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (c)"; and in (c), deleted "of not more than ten (10) years each" following "additional terms" in the first sentence, and rewrote the second sentence, which read: "An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement."

SUBARTICLE D.

DERIVATIVE PROCEDURES.

§ 79-4-7.41. Who may commence or maintain derivative proceeding.

JUDICIAL DECISIONS

1. Standing.

Son lacked standing to bring suit on behalf of closely held corporations because the injury for which he sought relief pertained to the corporations only; the son's objection to the closing of the decedent's estate was a shareholder derivative claim because the son was seeking solely to enforce a putative corporate right, and the son failed to satisfy the statutory conditions required of shareholder derivative actions. Ware v. Ware (In re Estate of Ware), 238 So. 3d 613, 2018 Miss. LEXIS 86 (Miss. 2018).

§ 79-4-7.42. Prerequisites to commencing derivative proceeding.

JUDICIAL DECISIONS

ANALYSIS

2. Suit demand not required.
3. Standing.

2. Suit demand not required.

Sister had standing to assert corporate claims because (1) the subject corporations were closely held, (2) the sister's accounting and dissolution claims were direct actions, and (3) the sister's fiduciary breach claims were properly considered as direct actions, since no creditors were prejudiced, there was no risk of multiple suits, and the claims did not interfere with the fair distribution of a recovery. Scafidi v. Hille, 180 So. 3d 634, 2015 Miss. LEXIS 603 (Miss. 2015).

3. Standing.

Son lacked standing to bring suit on behalf of closely held corporations because the injury for which he sought relief pertained to the corporations only; the son's objection to the closing of the decedent's estate was a shareholder derivative claim because the son was seeking solely to enforce a putative corporate right, and the son failed to satisfy the statutory conditions required of shareholder derivative actions. Ware v. Ware (In re Estate of Ware), 238 So. 3d 613, 2018 Miss. LEXIS 86 (Miss. 2018).

§ 79-4-7.44. Determination by independent directors or independent persons whether maintenance of proceeding is in best interests of corporation.

JUDICIAL DECISIONS

ANALYSIS

1. Burden of proof.
2. Special committee.

1. Burden of proof.

Plaintiff bears the burden, pursuant to Miss. Code Ann. § 79-4-7.44(d), of establishing, pursuant to § 79-4-7.44(a), that a special committee's determination that the maintenance of the derivative proceeding was not in the best interests of the corporation was not made in good faith after it conducted a reasonable inquiry upon which its conclusions were based. If the plaintiff fails to demonstrate lack of good faith after a reasonable inquiry upon which the special committee's conclusions were based, then the derivative proceeding must be dismissed. Burgess v. Patterson, 188 So. 3d 537, 2016 Miss. LEXIS 154 (Miss. 2016).

Plaintiff failed to demonstrate that a special committee's decision that the maintenance of the derivative suit was not in the best interests of the corporation was not made in good faith after it had conducted a reasonable inquiry. Therefore, the circuit court was not in error for granting dismissal to the corporation. Burgess v. Patterson, 188 So. 3d 537, 2016 Miss. LEXIS 154 (Miss. 2016).

2. Special committee.

Because plaintiff did not allege with particularity facts establishing that the members of a special committee were not qualified, dismissal of plaintiff's derivative action was appropriate. Burgess v. Patterson, 188 So. 3d 537, 2016 Miss. LEXIS 154 (Miss. 2016).

§ 79-4-7.46. Expenses and attorney fees.

JUDICIAL DECISIONS

1. In general.

Chancellor did not err in awarding a shareholder attorney's fees to be paid by a corporation because the finding that the shareholder's derivative action benefitted the corporation was supported by the record. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

Because the chancellor would have been within his discretion to award no attorney's fees at all, the supreme court refused to second-guess the chancellor but instead affirmed the attorney's fees award to a shareholder, including the order that the corporation had to pay, on both appeal and cross-appeal. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

ARTICLE 8.

DIRECTORS AND OFFICERS.

SUBARTICLE C.

STANDARDS OF CONDUCT.

§ 79-4-8.30. General standards for directors.

JUDICIAL DECISIONS

1. In general.

Chancellor properly found that a shareholder brought a valid derivative action because there was record evidence to support the chancellor's determination that a director, in his personal anger toward the shareholder and his disdain for being called "greedy," violated his duty of good faith and care to act in the best interest of the corporation and in doing so jeopardized the corporation as a going concern. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

SUBARTICLE F.

DIRECTOR'S CONFLICTS OF INTEREST.

§ 79-4-8.70. Business opportunities.

JUDICIAL DECISIONS

1. No breach found.

Fifty-percent shareholder in a company and related parties did not breach their corporate fiduciary duties to company and divert certain corporate opportunities of company because company was completely dysfunctional due to a stalemate with the other shareholder and could not take advantage of opportunities that were allegedly usurped or diverted. Mandrella v. East (In re East Sys.), 2012 Bankr. LEXIS 5929 (Bankr. N.D. Miss. Dec. 28, 2012).

ARTICLE 10.

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.

SUBARTICLE A.

AMENDMENT OF ARTICLES OF INCORPORATION.

§ 79-4-10.09. Effect of amendment.

JUDICIAL DECISIONS

3. Illustrative cases.

Arbitrator was the proper arbitrator, and it had jurisdiction, because the arbitrator's name change did not negate the validity of an arbitration agreement, Wells Fargo Advisors, LLC v. Runnels, 126 So. 3d 137, 2013 Miss. App. LEXIS 781 (Miss. Ct. App. 2013).

ARTICLE 13.

APPRAISAL RIGHTS.

Subarticle A. Right to Appraisal and Payment for Shares. 79-4-13.01

SUBARTICLE A.

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

Sec.
79-4-13.02. Right to appraisal.

§ 79-4-13.02. Right to appraisal.

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by Section 79-4-11.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed by Section 79-4-11.05;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to Section 79-4-12.02 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the domestication; or

(7) Consummation of a conversion of the corporation to a different form of entity under the Mississippi Entity Conversion and Domestication Act.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsection (a)(1), (2), (3), (4) and (6) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available to any shareholder of the constituent corporations in a corporate reorganization transaction otherwise covered by subsection (a)(1) or (2) if: (i) the shareholders of an existing corporation exchange shares of such corporation for shares of a newly formed corporation and receive, after the reorganization, the same proportionate share interest in the new corporation and the rights and interests of the shareholders in the newly formed corporation are substantially the same as those in the existing corporation prior to the transaction; (ii) the newly formed corporation has no significant assets other than the shares of the existing corporation; (iii) after the reorganization the newly formed corporation and its subsidiaries have substantially the same assets and liabilities, on a consolidated basis, as those of the existing corporation prior to the transaction; (iv) fractional shares are neither created nor eliminated as a result of the transaction; (v) the existing corporation and the newly formed corporation are the only constituent corporations to such reorganization; (vi) the existing corporation and the newly formed corporation are corporations of this state; (vii) the directors of the existing corporation become the directors of the newly formed corporation upon the effective time of the corporate reorganization; (viii) the existing corporation becomes a direct wholly owned subsidiary of the newly formed corporation; and (ix) the shareholders of the existing corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the existing corporation.

(2) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) Listed on the New York Stock Exchange or designated as a

national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) Not so listed or designated, but has at least two thousand (2,000) shareholders and the outstanding shares of such class or series has a market value of at least Twenty Million Dollars ($20,000,000.00) (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares).

(3) The applicability of subsection (b)(2) shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders.

(4) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(2) at the time the corporate action becomes effective.

(5) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or to other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

HISTORY: Laws, 1987, ch. 486, § 13.02; Laws, 1990, ch. 411, § 7; Laws, 2000, ch. 469, § 29; Laws, 2001, ch. 435, § 14; Laws, 2007, ch. 361, § 9; Laws, 2014, ch. 399, § 36, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, effective January 1, 2015, deleted "or" following "fractional share so created" at the end of (a)(4) and "or the American Stock Exchange" following "New York Stock Exchange" at the beginning of (b)(2)(i); inserted (a)(6) and (a)(7); substituted a comma for "and" and inserted "and (6)" in (b); and made minor punctuation changes.

ARTICLE 14.
DISSOLUTION.

Subarticle B. Administrative Dissolution. 79-4-14.20

SUBARTICLE A.
VOLUNTARY DISSOLUTION.

§ 79-4-14.05. Effect of dissolution.

JUDICIAL DECISIONS

2. Capacity to bring action.

When plaintiffs corporation and principal sued defendant supplier, the corporation was properly dismissed because it was administratively dissolved under Miss. Code Ann. § 79-4-14.21(b) (2013), so, under Miss. Code Ann. § 79-4-14.22(a)(4) (2013), it could not maintain its claim, it did not seek voluntary or judicial dissolution, so it could not maintain its suit to wind up its business, and it was not defending a suit. Wayne Johnson Elec. Inc. v. Robinson Elec. Supply Co., 266 So. 3d 643, 2019 Miss. LEXIS 122 (Miss. 2019).

SUBARTICLE B.
ADMINISTRATIVE DISSOLUTION.

Sec.
79-4-14.21. Procedure for and effect of administrative dissolution.

§ 79-4-14.21. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination, except that such determination may be served by first-class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation, except that such certificate may be served by first-class mail.

(c) A corporation that has been administratively dissolved continues its corporate existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs under Section 79-4-14.05 and notify claimants under Sections 79-4-14.06 and 79-4-14.07.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) The administrative dissolution of a corporation shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of the corporation or prevent the corporation from defending any action, suit or proceeding in any court of this state.

(f) A corporation that has been administratively dissolved may not maintain any action, suit or proceeding in any court of this state until the corporation is reinstated.

HISTORY: Laws, 1987, ch. 486, § 14.21; Laws, 1991, ch. 509, § 2; Laws, 2012, ch. 382, § 37; Laws, 2012, ch. 481, § 36; Laws, 2017, ch. 369, § 2, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added (c), which had previously been set out as reserved.

JUDICIAL DECISIONS

2. Standing to bring action.

When plaintiffs corporation and principal sued defendant supplier, the corporation was properly dismissed because it was administratively dissolved under Miss. Code Ann. § 79-4-14.21(b) (2013), so, under Miss. Code Ann. § 79-4-14.22(a)(4) (2013), it could not maintain its claim, it did not seek voluntary or judicial dissolution, so it could not maintain its suit to wind up its business, and it was not defending a suit. Wayne Johnson Elec. Inc. v. Robinson Elec. Supply Co., 266 So. 3d 643, 2019 Miss. LEXIS 122 (Miss. 2019).

Dissolved corporation could not bring an action against a school district because it had been administratively dissolved, pursuant to this section; the action was not related to the winding down of the corporation, and it was initiated by a profit corporation, a status that the dissolved corporation did not enjoy. Columbus Cheer Co. v. City of Columbus, 155 So. 3d 744, 2014 Miss. LEXIS 532 (Miss. 2014).

§ 79-4-14.22. Reinstatement following administrative dissolution.

JUDICIAL DECISIONS

2. Capacity to bring action.

When plaintiffs corporation and principal sued defendant supplier, the corporation was properly dismissed because it was administratively dissolved under Miss. Code Ann. § 79-4-14.21(b) (2013), so, under Miss. Code Ann. § 79-4-14.22(a)(4) (2013), it could not maintain its claim, it did not seek voluntary or judicial dissolution, so it could not maintain its suit to wind up its business, and it was not defending a suit. Wayne Johnson Elec. Inc. v. Robinson Elec. Supply Co., 266 So. 3d 643, 2019 Miss. LEXIS 122 (Miss. 2019).

SUBARTICLE C.
JUDICIAL DISSOLUTION.

§ 79-4-14.30. Grounds for judicial dissolution.

JUDICIAL DECISIONS

ANALYSIS

1. Dissolution order did not exceed pleadings.
2. Claim stated.
3. Alternative to dissolution.

1. Dissolution order did not exceed pleadings.

Chancellor's corporate dissolution order did not exceed the pleadings because (1) such a claim was adequately pled, (2) the chancellor did not have to grant an election to purchase shares before exercising broad equity powers under Miss. Code Ann. § 79-4-14.34(i), (3) the chancellor could grant alternate remedies, since dissolution was not ordered, and (4) fiduciary breach was adequately claimed. Scafidi v. Hille, 180 So. 3d 634, 2015 Miss. LEXIS 603 (Miss. 2015).

2. Claim stated.

Appellant stated a claim for dissolution of the corporation because the agreement in question might be invalid as applied to appellant due to oppressive or fraudulent conduct, in which case she would be entitled to the fair value of her share, and dismissal of her claim was reversed; other shareholders offered her only $ 900,000 for her share, when she allegedly had been offered $ 1.5 million by an outsider, and there was a question of fact whether the price had been previously set at an annual meeting by secret ballot. Chain v. Ormonde Plantation, Inc., 303 So. 3d 53, 2020 Miss. App. LEXIS 98 (Miss. Ct. App.), cert. denied, — So. 3d —, 2020 Miss. LEXIS 360 (Miss. 2020).

3. Alternative to dissolution.

Chancellor did not err by awarding a shareholder fifty percent ownership instead of dissolving a corporation because the chancellor had authority to order the transfer of shares from the director to the shareholder to achieve 50/50 ownership as a remedy for the director's oppressive conduct; the record supported the finding the director had engaged in oppressive conduct sufficient to warrant corporate dissolution. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

§ 79-4-14.34. Election to purchase in lieu of dissolution.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Equitable powers.

1. In general.

Appellant stated a claim for dissolution of the corporation because the agreement in question might be invalid as applied to appellant due to oppressive or fraudulent conduct, in which case she would be entitled to the fair value of her share, and dismissal of her claim was reversed; other shareholders offered her only $ 900,000 for her share, when she allegedly had been offered $ 1.5 million by an outsider, and there was a question of fact whether the price had been previously set at an annual meeting by secret ballot. Chain v. Ormonde Plantation, Inc., 303 So. 3d 53, 2020 Miss. App. LEXIS 98 (Miss. Ct. App.), cert. denied, — So. 3d —, 2020 Miss. LEXIS 360 (Miss. 2020).

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2. Equitable powers.

Chancellor's corporate dissolution order did not exceed the pleadings because (1) such a claim was adequately pled, (2) the chancellor did not have to grant an election to purchase shares before exercising broad equity powers under Miss. Code Ann. § 79-4-14.34(i), (3) the chancellor could grant alternate remedies, since dissolution was not ordered, and (4) fiduciary breach was adequately claimed. Scafidi v. Hille, 180 So. 3d 634, 2015 Miss. LEXIS 603 (Miss. 2015).

When a shareholder sought a family corporation's judicial dissolution in chancery court, a decree awarding the shareholder an in-kind division of the corporation's land was not unauthorized, even after siblings invoked their right to purchase the shareholder's shares, because Miss. Code Ann. § 79-4-14.34 said nothing to diminish the chancellor's equity powers to fashion an alternate remedy. Rainbow Ranch, Inc. v. Hardin (In re Will of Hardin), 158 So. 3d 341, 2014 Miss. App. LEXIS 401 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 120 (Miss. 2015).

ARTICLE 15.

FOREIGN CORPORATIONS.

SUBARTICLE A.

CERTIFICATE OF AUTHORITY.

§ 79-4-15.02. Consequences of transacting business without authority.

JUDICIAL DECISIONS

I. Under Current Law.

2. Transacting business.

Foreign corporation was barred from maintaining an action against a departing lawyer where it never obtained a certificate of authority to transact business in Mississippi as required by Miss. Code Ann. § 79-4-15.01(a) (Rev. 2013), and its actions in signing up clients in Mississippi, filing lawsuits and pleadings in Mississippi courts, and entering into employment contracts with Mississippi lawyers constituted transacting business in the state. Fulgham v. Morgan & Morgan, PLLC, — So. 3d —, 2019 Miss. App. LEXIS 615 (Miss. Ct. App. Dec. 17, 2019).

ARTICLE 16.

RECORDS AND REPORTS.

SUBARTICLE A.

RECORDS.

§ 79-4-16.04. Court-ordered inspection.

JUDICIAL DECISIONS

1. Restrictions.

Both the statute involving shareholders' rights to inspect corporate records and the statute involving a director's inspection of corporate records allow trial courts to impose reasonable restrictions on the use or distribution of the records; the chancery court did not abuse its discretion in imposing the restrictions in this case. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291, 2016 Miss. LEXIS 370 (Miss. 2016).

§ 79-4-16.05. Inspection of records by director.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Restrictions.

1. In general.

Chancery court's order complied with the relevant statutes by allowing the heir, as director, access to the books and records, with restrictions, and there was no abuse of discretion; she did not explain what documents she was prevented from reviewing, nor did she allege that the documents she was given were incomplete. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291, 2016 Miss. LEXIS 370 (Miss. 2016).

2. Restrictions.

Both the statute involving shareholders' rights to inspect corporate records and the statute involving a director's inspection of corporate records allow trial courts to impose reasonable restrictions on the use or distribution of the records; the chancery court did not abuse its discretion in imposing the restrictions in this case. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291, 2016 Miss. LEXIS 370 (Miss. 2016).

CHAPTER 11.

NONPROFIT, NONSHARE CORPORATIONS AND RELIGIOUS SOCIETIES

Mississippi Nonprofit Corporation Act. 79-11-101
Regulation of Charitable Solicitations. 79-11-501

MISSISSIPPI NONPROFIT CORPORATION ACT

Sec.

79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.

Sec.
79-11-159. Reserving exclusive use of corporate name; transferring reserved corporate name.
79-11-161. Repealed.

§ 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.

(1) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

Document	Fee
(a) Articles of incorporation	$50.00
(b) [Reserved]	
(c) Application for reserved name	25.00
(d) Notice of transfer or cancellation of reserved name	25.00
(e) [Reserved]	
(f) [Reserved]	
(g) [Reserved]	
(h) [Reserved]	
(i) [Reserved]	
(j) Amendment of articles of incorporation	50.00
(k) Restatement of articles of incorporation with amendments	50.00
(*l*) Articles of merger	50.00
(m) Articles of dissolution	25.00
(n) Articles of revocation of dissolution	25.00
(o) Certificate of administrative dissolution	No Fee
(p) Application for reinstatement following administrative dissolution	50.00
(q) Certificate of reinstatement	No Fee
(r) Certificate of judicial dissolution	No Fee
(s) Application for certificate of authority	100.00
(t) Application for amended certificate of authority	50.00
(u) Application for certificate of withdrawal	25.00
(v) Certificate of revocation of authority to transact business	No Fee
(w) Status report	25.00
(x) Articles of correction	50.00
(y) Application for certificate of existence or authorization	25.00
(z) Any other document required or permitted to be filed by Section 79-11-101 et seq	25.00

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) upon being served with process under Section 79-11-101 et seq. The party to a proceeding

causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One Dollar ($1.00) a page for copying; and

(b) Ten Dollars ($10.00) for the certificate.

(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

HISTORY: Laws, 1987, ch. 485, § 5; Laws, 1988, ch. 417, § 1; Laws, 1995, ch. 323, § 1; Laws, 2012, ch. 382, § 52; Laws, 2014, ch. 468, § 6, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1)(b), substituted "[Reserved]" for "Application for use of indistinguishable name . . . 25.00"; in (1)(e), substituted "[Reserved]" for "Application for registered name . . . 50.00"; and in (1)(f), substituted "[Reserved]" for "Application for renewal of registered name . . . 50.00."

§ 79-11-157. Corporate name.

Editor's Notes — Section 79-4-4.03, referred to in (2)(b), was repealed by Laws of 2014, ch. 468, § 9, effective July 1, 2014.

§ 79-11-159. Reserving exclusive use of corporate name; transferring reserved corporate name.

(1) A person may reserve the exclusive use of a legal corporate name that complies with Section 79-11-157, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a period of one hundred eighty (180) days. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

HISTORY: Laws, 1987, ch. 485, § 30; Laws, 2014, ch. 468, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1), inserted "legal" following "the exclusive use of a" and "that complies with Section 79-11-157" following "corporate name" in the first sentence; deleted "nonrenewable" following "applicant's exclusive use for" near the end of the second sentence; added the last sentence; and in (2), inserted "to" following "another person by delivering."

§ 79-11-161. Repealed.

Repealed by Laws, 2014, ch. 468, § 10, effective from and after July 1, 2014.

§ 79-11-161. [Laws, 1987, ch. 485, § 31, eff from and after January 1, 1988.]

Editor's Notes — Former § 79-11-161 provided for the registration of a foreign corporation's corporate name.

§ 79-11-193. Proceedings brought on behalf of domestic or foreign corporation.

JUDICIAL DECISIONS

2. Attorney fees.

Neither party was entitled to attorney fees because a developer did not breach any portion of the subdivision covenants, and the homeowners' lawsuit was neither frivolous, brought in bad faith, without reasonable cause, nor for an improper purpose, and they succeeded in obtaining a judgment in their favor as to one issue —that the developer was an owner of its residential lots. Heckenberger v. Livingston Dev. Corp., 282 So. 3d 1252, 2019 Miss. App. LEXIS 488 (Miss. Ct. App. 2019).

REGULATION OF CHARITABLE SOLICITATIONS

Sec.

79-11-503. Registration statement; filing fee; forms; records; exceptions; final report upon expiration of registration of corporation opting not to renew registration; report contents.
79-11-505. Exemption from provisions; notice of exemption; burden of proof.
79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties; appeal.

§ 79-11-503. Registration statement; filing fee; forms; records; exceptions; final report upon expiration of registration of corporation opting not to renew registration; report contents.

(1) Except as otherwise provided in Section 79-11-505 and prior to any solicitation of contributions, every charitable organization as defined in Section 79-11-501 which solicits or intends to solicit contributions by any means whatsoever shall file a registration statement with, and pay a filing fee of Fifty Dollars ($50.00) to, the Secretary of State. A registration statement that contains false, misleading, deceptive or incomplete information or documentation shall not be considered sufficient. The registration statement shall be on forms prescribed by the Secretary of State and shall contain the following information and such other information that the Secretary of State may require by rule:

(a) The name of the organization and the name or names under which it intends to solicit contributions;

(b) The names and addresses of the officers, directors, trustees and chief executive officer of the organization;

(c) The addresses of the organization and any offices in this state. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records;

(d) Where and when the organization was legally established, the form of its organization and its tax-exempt status;

(e) The purpose for which the organization and the purpose or purposes for which the contributions to be solicited will be used;

(f) The date on which the fiscal year of the organization ends;

(g) Whether the organization is authorized by any other governmental authority to solicit contributions and a statement of (i) whether the charitable organization or any of its present officers, directors, executive personnel or trustees have ever had a license or registration denied, suspended, revoked or enjoined by any court or other governmental authority in this state or any other state, or (ii) whether the charitable organization has voluntarily entered into an assurance or voluntary discontinuance or agreement with any jurisdiction or federal agency or officer;

(h) The names and addresses of any professional fundraisers or fund-raising counsel who are acting or have agreed to act on behalf of the organization;

(i) Methods by which solicitation will be made;

(j) Copies of contracts between charitable organizations and professional fundraisers or fund-raising counsel relating to financial compensation or profit to be derived by the professional fundraisers or fund-raising counsel. If any such contract is executed after filing of a registration statement, a copy thereof shall be filed within ten (10) days of the date of execution;

(k) The board, group or individual having final authority over the distribution, custody and use of contributions received;

(*l*) A financial report as required by Section 79-11-507;

(m) With the initial registration only, a copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument and a copy of the bylaws of the charitable organization; and

(n) With the initial registration or, if after registration, within thirty (30) days after its receipt, a copy of any federal tax exemption determination letter, any correspondence rescinding the charitable organization's tax-exempt status, or any notification from the Internal Revenue Service of any challenge to or investigation of the charitable organization's continued entitlement to federal tax exemption.

(2) The registration statement shall be signed and sworn to under penalties of perjury by the president or other authorized officer and the chief fiscal officer of the organization.

(3) The Secretary of State shall issue a certificate of registration to a charitable organization once the Secretary of State determines that such organization has complied with all provisions of this chapter. No charitable organization required to be registered under this section shall solicit funds without a valid certificate of registration.

(4)(a) Such registration shall remain in effect until the time for annual renewal. A charitable organization shall renew registration by filing forms prescribed by the Secretary of State and paying the Fifty Dollar ($50.00) renewal fee on or before the fifteenth day of the fifth month following the close of the charitable organization's taxable year.

(b) The Secretary of State pursuant to Section 79-11-509 may promulgate rules to provide for extensions of the due date for filing of the annual renewal required by this section and may impose an administrative penalty against any organization which fails to comply with this section within the time prescribed, or fails to furnish such additional information as is requested by the Secretary of State within the required time.

(5) Every registered organization shall notify the Secretary of State within thirty (30) days of any change in the information required to be furnished by such organization under Sections 79-11-501 through 79-11-529.

(6) In no event shall a registered charitable organization continue to solicit contributions in or from this state after the date such organization should have filed, but failed to file, a renewal and the financial report in accordance with the requirements of Sections 79-11-501 through 79-11-529.

(7) If any local, county or area division of a charitable organization is supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this state, such local, county or area division shall not be required to register under this section if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. If a registration statement has been filed by a superior or parent organization as provided in Section 79-11-503(1), it shall file the annual report required under Section 79-11-507 on behalf of the local, county or area division in addition to or as part of its own report, but the accounting information required under Section 79-11-507 shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than Twenty-five Thousand Dollars ($25,000.00).

(8) Any registered charitable organization which for any reason opts not to renew its registration must, upon the expiration of its registration, provide to the Secretary of State a final report including the following, in addition to such other information the Secretary of State may require by rule:

(a) For domestic charitable organizations which have dissolved pursuant to the Mississippi Nonprofit Corporation Act;

(i) All financial statements and reports required by Section 79-11-507;

(ii) Articles of dissolution and certified minutes reflecting the dissolution;

(iii) A list of officers and trustees of the corporation, including their addresses and telephone numbers; and

(iv) A statement signed by an officer of the corporation providing details of the final distribution of assets.

(b) For all other charitable organizations, foreign or domestic, which opt not to renew for any other reason:

(i) All financial statements and reports required by Section 79-11-507; and

(ii) A statement signed by an officer of the charitable organization certifying that the organization has ceased charitable solicitations within the state.

HISTORY: Laws, 1991, ch. 515, § 2; reenacted and amended, Laws, 1992, ch. 446, § 2; Laws, 1997, ch. 444, § 2; Laws, 2009, ch. 547, § 5; Laws, 2016, ch. 313, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment rewrote (4), which read: "Such registration shall remain in effect for one (1) year, unless renewed by the filing of forms as prescribed by the Secretary of State and upon payment of the Fifty Dollars ($50.00) renewal fee."

§ 79-11-505. Exemption from provisions; notice of exemption; burden of proof.

(1) The registration provisions of Section 79-11-503 and the reporting provisions of Section 79-11-507 shall not apply to the following organizations:

(a) All educational institutions that are recognized by the State Board of Education or that are accredited by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution which makes the solicitation of contributions solely by its student body, alumni, faculty and trustees and their families or a library established under the laws of this state.

(b) Fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is made solely by their membership; however, posts of the American Legion and posts of the Veterans of Foreign Wars of the United States may utilize nonmembers to assist designated supervisors in the conduct of bingo under the Charitable Bingo Law and qualify for this exemption. This exemption shall be extended to any subsidiary of a parent or superior organization if such solicitation is made solely by the membership of the subsidiary, parent or superior organization.

(c) Persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets or social gatherings, if any, provided all fundraising functions are carried on by persons who are unpaid, directly or indirectly, for such services.

(d) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of Twenty-five Thousand Dollars ($25,000.00) during any twelve-month period ending June 30 of any year or on such other date as prescribed by rule, provided all of its fundraising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any twelve-month period ending June 30 of any year or other date as prescribed by rule shall be in excess of Twenty-five Thousand Dollars ($25,000.00) it shall, within thirty (30) days after the date it shall have received total contributions in excess of Twenty-five Thousand Dollars ($25,000.00), register with and report to the Secretary of State as required by this chapter.

(e) Any charitable organization receiving an allocation from an incorporated community chest or united fund, provided such chest or fund is complying with the provisions of Sections 79-11-501 through 79-11-529 relating to registration and filing of annual reports with the Secretary of State, and provided such organization does not actually receive, in addition to such allocation, contributions in excess of Twenty-five Thousand Dollars ($25,000.00) during any twelve-month period ending June 30 of any year or such other date as prescribed by rule, and provided further, that all the fundraising functions of such organization are carried on by persons who are unpaid for such services. However, if the gross contributions other than such allocation received by such charitable organization during any twelve-month period ending June 30 of any year or on such other date as prescribed by rule shall be in excess of Twenty-five Thousand Dollars ($25,000.00), it shall, within thirty (30) days after the date it shall have received such contributions in excess of Twenty-five Thousand Dollars ($25,000.00), register with and report to the Secretary of State as required by this chapter.

(f) All volunteer fire departments or rescue units, rural or otherwise, chartered under the laws and statutes of the State of Mississippi as nonprofit corporations.

(g) Any humane society organized under the laws of Mississippi which receives not less than fifty percent (50%) of its annual funding from contracts with counties or municipalities for the care and keeping of estrays.

(h) Any other organization which the Secretary of State by rule or order exempts from the registration requirements of this chapter upon finding that (i) such registration is neither necessary in the public interest nor for the protection of contributors, or (ii) such exemption shall further the objectives of compatibility with uniformity among the states.

(2) Prior to any solicitations for contributions, each charitable organization claiming to be exempt shall file a Notice of Exemption on the forms prescribed by the Secretary of State. In any proceeding under this chapter, the burden of proving an exemption, or an exception from a definition, is upon the person claiming it.

HISTORY: Laws, 1991, ch. 515, § 3; reenacted and amended, Laws, 1992, ch.

446, § 3; Laws, 1994, ch. 393, § 1; Laws, 1997, ch. 444, § 4; Laws, 2007, ch. 360, § 1; Laws, 2009, ch. 547, § 6, eff from and after July 1, 2009; Laws, 2018, ch. 370, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment inserted "receives not less than fifty percent (50%) of its annual funding from" in (1)(g).

§ 79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties; appeal.

(1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

(a) The application for registration or renewal is incomplete.

(b) The application or renewal fee (where applicable) has not been paid.

(c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts.

(d) The charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State.

(e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or order thereunder.

(f) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent or employee thereof who has been convicted of a felony or a misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another maintains a position where he or she has access to or control over the funds of the charitable organization.

(g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

(h) The applicant or registrant has had the authority to engage in charitable or fund-raising activities denied, revoked or suspended by the Secretary of State or any other state or jurisdiction.

(i) The applicant or registrant has been convicted of any criminal offense committed in connection with the performance of activities regulated under Sections 79-11-501 through 79-11-529 or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's or applicant's fitness to perform activities regulated by Sections 79-11-501 through 79-11-529. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction.

(j) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent, volunteer or employee thereof, who has been convicted under federal or state law of any criminal offense involving acts against children maintains a position where he or she is in close contact with children.

(k) Any officer, director, partner, employee, agent or volunteer has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to this section.

(*l*) The applicant or registrant has engaged in other forms of misconduct as may be determined by the rules adopted by the Secretary of State.

(2) The Secretary of State shall notify the applicant or licensee of his intent to deny, suspend or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to request an administrative hearing within thirty (30) days of receipt of the notification. The denial, suspension or revocation shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the denial, suspension or revocation is upheld, the denial, suspension or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee.

(3) Registration shall become effective no later than noon of the thirtieth day after a completed application is filed, if no denial order is in effect and no proceeding is pending under this chapter. The Secretary of State may, by rule or order, specify an earlier effective date, and the Secretary of State may, by order, defer the effective date until noon of the thirtieth day after the filing of any amendment.

(4) Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may, in his discretion, seek one or more of the following remedies in addition to other remedies authorized by law:

(a) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity;

(b) Administratively dissolve or seek the judicial dissolution of a domestic corporation that is a charitable organization, or revoke the certificate of authority of a foreign corporation that is a charitable organization; or

(c) Issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars ($25,000.00) for each offense, each violation to be considered as a separate offense in a single proceeding or a series of related proceedings;

(d) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b) or (c) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(5) In addition to the above remedies, the Secretary of State may issue a citation to any person engaging in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder. The Secretary

of State shall establish rules providing remediation of certain citations, and the decision whether to allow such remediation will be within the Secretary of State's discretion.

(6) Whenever it appears to the Secretary of State or Attorney General that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder, either official may, in his discretion, take any or all of the following actions: bring an action in chancery court to obtain a temporary restraining order or injunction to enjoin the acts or practices and enforce compliance with Sections 79-11-501 through 79-11-529 or any rule or order thereunder; collect administrative penalties imposed under this section; or obtain on behalf of a charitable organization the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Section 79-11-519(3)(j). Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing, the court may enter an order of rescission, restitution or disgorgement directed to any person who has engaged in any act constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder. In addition the court may impose a civil penalty up to a maximum of Twenty-five Thousand Dollars ($25,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State or Attorney General to post a bond.

(7) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

HISTORY: Laws, 1991, ch. 515, § 5; reenacted and amended, Laws, 1992, ch. 446, § 5; Laws, 1997, ch. 444, § 6; Laws, 2009, ch. 547, § 8; Laws, 2016, ch. 447, § 4, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (7).

CHAPTER 13.

UNIFORM PARTNERSHIP ACT (1997)

Article 1. General Provisions. 79-13-101

Article 4. Relations of Partners to Each Other and to Partnership. .. 79-13-401
Article 5. Transferees and Creditors of Partner. 79-13-501
Article 9. Conversions and Mergers. 79-13-901
Article 10. Limited Liability Partnership. 79-13-1001
Article 11. Foreign Limited Liability Partnership. 79-13-1101

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
79-13-101. Definitions.

§ 79-13-101. Definitions.

In this chapter:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Domestic partnership" means a partnership whose internal relations are governed by the laws of this state.

(5) "Foreign limited liability partnership" means a partnership that:

(i) Is formed under laws other than the laws of this state; and

(ii) Has the status of a limited liability partnership under those laws.

(6) "Foreign partnership" means a partnership other than a domestic partnership.

(7) "Limited liability partnership" or "domestic limited liability partnership" means a partnership that has filed a statement of qualification under Section 79-13-1001 and does not have a similar statement in effect in any other jurisdiction.

(8) "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under Section 79-13-202, predecessor law, or comparable law of another jurisdiction.

(9) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(10) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(11) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Statement" means a statement of partnership authority under Section 79-13-303, a statement of denial under Section 79-13-304, a statement of dissociation under Section 79-13-704, a statement of dissolution under Section 79-13-805, a statement of merger under Section 79-13-907, a statement of qualification under Section 79-13-1001, a statement of foreign qualification under Section 79-13-1102, or an amendment or cancellation of any of the foregoing.

(16) "Surviving partnership" means a domestic or foreign partnership into which one or more domestic or foreign partnerships are merged. A surviving partnership may preexist the merger or be created by the merger.

(17) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

HISTORY: Laws, 2004, ch. 458, § 101; Laws, 2014, ch. 399, § 37, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, effective January 1, 2015, added (4), (6), and (16) and redesignated remaining subsections accordingly; inserted "or 'domestic limited liability partnership' " to present (7).

JUDICIAL DECISIONS

1. Statute of frauds.

Statute of frauds did not bar claim by purported partners because the partners' claims did not involve a dispute over a contract for the sale of lands, but a dispute over partnership profits and assets. An otherwise enforceable verbal partnership agreement did not constitute a contract for the sale of lands under the statute of frauds simply because the purpose of the partnership included the purchase of real estate. Latham v. Johnson, 262 So. 3d 569, 2018 Miss. App. LEXIS 314 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 48 (Miss. 2019).

ARTICLE 2.

NATURE OF PARTNERSHIP.

§ 79-13-201. Partnership as entity.

JUDICIAL DECISIONS

1. Bankruptcy.

Where creditor sold farm supplies to partnership in which debtor was general partner, creditor was not entitled to administrative expense claim because partnership was separate legal entity and par-

ties stipulated that farm supplies were delivered to partnership, and not to either general partner. In re Spencer, — B.R. —, 2016 Bankr. LEXIS 3867 (Bankr. N.D. Miss. Nov. 1, 2016).

§ 79-13-202. Formation of partnership.

JUDICIAL DECISIONS

1. Partnership not found.

A surviving spouse was entitled to a directed verdict because, although a claimant had to prove that the surviving spouse and the decedent were in a partnership, no evidence of a partnership was presented as there was no evidence that the surviving spouse and the decedent intended to run the business as partners, that the surviving spouse controlled the direction of the business, or that the surviving spouse and the decedent were sharing profits. Malouf v. Evans, 276 So. 3d 1184, 2018 Miss. App. LEXIS 326 (Miss. Ct. App. 2018), rev'd, 267 So. 3d 272, 2019 Miss. LEXIS 151 (Miss. 2019).

Chancellor did not abuse his discretion in finding no partnership existed between the parties, given that appellant did not prove that the parties intended to enter into a partnership agreement for a business, and thus appellant could not claim that the parties entered a partnership with the property based on its association with the business, plus appellant failed to prove that she controlled the day-to-day operations or the direction of the business, and only appellee received dividends. Carlson v. Brabham, 199 So. 3d 735, 2016 Miss. App. LEXIS 32 (Miss. Ct. App.), cert. denied, 203 So. 3d 597, 2016 Miss. LEXIS 395 (Miss. 2016).

§ 79-13-203. Partnership property.

JUDICIAL DECISIONS

1. Conversion of property.

Chancery court erred in finding that a partner's attorney converted the partner's property because the evidence failed to establish that the checks or the funds at issue belonged to the partner individually where the property was either property of the partnership or represented the co-partner's share of the liquid assets of the partnership. Newton v. Brown, 198 So. 3d 1284, 2016 Miss. App. LEXIS 333 (Miss. Ct. App. 2016).

§ 79-13-204. When property is partnership property.

JUDICIAL DECISIONS

1. Partnership property.

Evidence supported the chancellor's determination that the property at issue was partnership property where the testimony revealed that all of these properties were treated as partnership property, that they were purchased with partnership funds, that the property taxes were paid with partnership funds, and that the rent from the properties was collected by and paid to the partnership. White v. White (In re White), 234 So. 3d 1210, 2017 Miss. LEXIS 351 (Miss. 2017).

ARTICLE 3.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

§ 79-13-308. Liability of purported partner.

JUDICIAL DECISIONS

1. Purported partner

Evidence supported a trial court's finding that a surviving spouse was not a purported partner of a business with the decedent–even if the surviving spouse participated in counting inventory, collecting money, and writing receipts. Malouf v. Evans, 276 So. 3d 1184, 2018 Miss. App. LEXIS 326 (Miss. Ct. App. 2018), rev'd, 267 So. 3d 272, 2019 Miss. LEXIS 151 (Miss. 2019).

ARTICLE 4.

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP.

Sec.
79-13-401. Partner's rights and duties.

§ 79-13-401. Partner's rights and duties.

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) Except as provided in Article 9 of this chapter or the Mississippi Entity Conversion and Domestication Act, a person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 79-13-301.

HISTORY: Laws, 2004, ch. 458, § 401; Laws, 2014, ch. 399, § 38, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, effective January 1, 2015, inserted the exception at the beginning of (i).

§ 79-13-405. Actions by partnership and partners.

JUDICIAL DECISIONS

1. Applicability.

When purported partners filed an action to enforce their rights under a partnership agreement, including their right to an equal share of the partnership profits, to information concerning the partnership's business and affairs, and to compel another partner to abide by that partner's fiduciary duties and duties of care to the partnership and the partners, an accounting was not required. Latham v. Johnson, 262 So. 3d 569, 2018 Miss. App. LEXIS 314 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 48 (Miss. 2019).

ARTICLE 5.

TRANSFEREES AND CREDITORS OF PARTNER.

Sec.
79-13-502. Partner's transferable interest in partnership.

§ 79-13-501. Partner not co-owner of partnership property.

JUDICIAL DECISIONS

1. Bankruptcy.

Where creditor sold farm supplies to partnership in which debtor was general partner, creditor was not entitled to administrative expense claim because partnership was separate legal entity and parties stipulated that farm supplies were delivered to partnership, and not to either general partner. In re Spencer, — B.R. —, 2016 Bankr. LEXIS 3867 (Bankr. N.D. Miss. Nov. 1, 2016).

§ 79-13-502. Partner's transferable interest in partnership.

Except as provided in Article 9 of this chapter or the Mississippi Entity Conversion and Domestication Act, the only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest of a partner, whether or not transferable, is personal property.

HISTORY: Laws, 2004, ch. 458, § 502; Laws, 2014, ch. 399, § 39, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, effective January 1, 2015, inserted the exception to the first sentence and "of a partner, whether or not transferable," in the middle of the last sentence.

Cross References — Mississippi Entity Conversion and Domestication Act, see § 79-37-101 et seq

ARTICLE 8.

WINDING UP PARTNERSHIP BUSINESS.

§ 79-13-807. Settlement of accounts and contributions among partners.

JUDICIAL DECISIONS

1. Conversion of property.

Chancery court erred in finding that a partner's attorney converted the partner's property because the evidence failed to establish that the checks or the funds at issue belonged to the partner individually where the property was either property of the partnership or represented the co-partner's share of the liquid assets of the partnership. Newton v. Brown, 198 So. 3d 1284, 2016 Miss. App. LEXIS 333 (Miss. Ct. App. 2016).

ARTICLE 9.

CONVERSIONS AND MERGERS.

Sec.

79-13-902. Repealed.
79-13-903. Repealed.
79-13-904. Repealed.
79-13-908. Nonexclusive.

§ 79-13-902. Repealed.

Repealed by Laws, 2014, ch. 399, § 48, effective January 1, 2015.

§ 79-13-902. [Laws, 2004, ch. 458, § 902, eff from and after Jan. 1, 2005]

Editor's Notes — Former § 79-13-902 provided for conversion of a partnership to a limited partnership.

§ 79-13-903. Repealed.

Repealed by Laws, 2014, ch. 399, § 49, effective January 1, 2015.
§ 79-13-903. [Laws, 2004, ch. 458, § 903, eff from and after Jan. 1, 2005]

Editor's Notes — Former § 79-13-903 was reserved for future enactment.

§ 79-13-904. Repealed.

Repealed by Laws, 2014, ch. 399, § 50, effective January 1, 2015.
§ 79-13-904. [Laws, 2004, ch. 458, § 903, eff from and after Jan. 1, 2005]

Editor's Notes — Former § 79-13-904 provided for the effect of a conversion.

§ 79-13-908. Nonexclusive.

This article is not exclusive. Partnerships may be converted or merged in any other manner provided or permitted by law.

HISTORY: Laws, 2004, ch. 458, § 908; Laws, 2014, ch. 399, § 40, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, effective January 1, 2015, inserted "or permitted" in the last sentence.

ARTICLE 10.

LIMITED LIABILITY PARTNERSHIP.

Sec.
79-13-1005. Administrative dissolution of statement of qualification; reinstatement.

§ 79-13-1005. Administrative dissolution of statement of qualification; reinstatement.

(a) A limited liability partnership whose statement of qualification has been administratively dissolved under Section 79-13-1004 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(1) Recite the name of the limited liability partnership and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the limited liability partnership's name satisfies the requirements of Section 79-13-1002; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that all taxes owed by the limited liability partnership have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve the limited liability partnership with a copy of the certificate.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(2) Any liability incurred by a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(3) The limited liability partnership may resume its business as if the administrative dissolution had never occurred.

HISTORY: Laws, 2012, ch. 382, § 79; Laws, 2015, ch. 453, § 2, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "Section 79-13-1004" for "Section 79-14-1004" in (a).

ARTICLE 11.

FOREIGN LIMITED LIABILITY PARTNERSHIP.

Sec.

79-13-1106. Administrative revocation of statement of foreign qualification; grounds.
79-13-1107. Administrative revocation of statement of foreign qualification; procedure.

§ 79-13-1106. Administrative revocation of statement of foreign qualification; grounds.

(a) The Secretary of State may commence a proceeding under Section 79-13-1107 to revoke the statement of foreign qualification of a foreign limited liability partnership authorized to transact business in this state if:

(1) [Reserved]

(2) The foreign limited liability partnership does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;

(3) The foreign limited partnership is without a registered agent in this state for sixty (60) days or more;

(4) The foreign limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;

(5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate

records in the state or country under whose law the foreign limited liability partnership is organized stating that it has been dissolved or disappeared as the result of a merger; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability partnership pursuant to this chapter.

(b) The Secretary of State may not revoke a statement of foreign qualification of a foreign limited liability partnership unless the Secretary of State sends the foreign limited liability partnership notice of the revocation at least sixty (60) days before its effective date, by a record addressed to its registered agent, or to the foreign limited liability partnership if the foreign limited liability partnership fails to appoint and maintain a proper agent in this state. The notice must specify the cause for the revocation of the registration. The authority of the foreign limited liability partnership to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability partnership cures the failure before that date.

HISTORY: Laws, 2012, ch. 382, § 82; Laws, 2015, ch. 453, § 3, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "Section 79-13-1107" for "Section 79-14-1107" in the introductory paragraph of (a); substituted "foreign limited liability partnership" for "limited partnership" in (a)(4); and inserted "foreign" preceding "limited liability partnership" in (a)(6) and in the second, third, fourth and fifth time it appears in (b).

§ 79-13-1107. Administrative revocation of statement of foreign qualification; procedure.

(a) If the Secretary of State determines that one or more grounds exist under Section 79-13-1106 for revocation of a statement of foreign qualification, he shall serve the foreign limited liability partnership with written notice of his determination, except that such determination may be served by first-class mail.

(b) If the foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected, the Secretary of State may revoke the foreign limited liability partnership's statement of foreign qualification by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited liability partnership, except that such certificate may be served by first-class mail.

(c) The authority of a foreign limited liability partnership to transact business in this state ceases on the date shown on the certificate revoking its registration.

(d) The Secretary of State's revocation of a foreign limited liability partnership's registration appoints the Secretary of State the foreign limited

liability partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability partnership was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited liability partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited liability partnership at its principal office shown in its most recent communication received from the foreign limited liability partnership stating the current mailing address of its principal office, or, if none are on file, in its application for a registration.

(e) Revocation of a foreign limited liability partnership's statement of foreign qualification does not terminate the authority of the registered agent of the foreign limited liability partnership.

HISTORY: Laws, 2012, ch. 382, § 83; Laws, 2015, ch. 453, § 4, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "Section 79-13-1106" for "Section 79-14-1106" in (a); and inserted "foreign" preceding "limited liability partnership" in (e).

CHAPTER 14.

MISSISSIPPI UNIFORM LIMITED PARTNERSHIP ACT

Article 1.	General Provisions.	79-14-101
Article 2.	Formation; Certificate of Limited Partnership and Other Filings.	79-14-201
Article 3.	Limited Partners.	79-14-301
Article 4.	General Partners.	79-14-401
Article 5.	Contributions and Distributions.	79-14-501
Article 6.	Dissociation.	79-14-601
Article 7.	Transferable Interests and Rights of Transferees and Creditors.	79-14-701
Article 8.	Dissolution and Winding Up.	79-14-801
Article 9.	Actions By Partners.	79-14-901
Article 10.	Foreign Limited Partnerships.	79-14-1001
Article 11.	Merger.	79-14-1101
Article 12.	Miscellaneous Provisions.	79-14-1201
Article 13.	Fees.	79-14-1301

Editor's Notes — The Mississippi Limited Partnership Act [Laws, 1987, ch. 488, §§ 101 through 1107] comprising former §§ 79-14-101 through 79-14-1107, was repealed by Section 6 of Chapter 453, Laws of 2015, effective July 1, 2015, and replaced by the Mississippi Uniform Limited Partnership Act, codified as §§ 79-14-101 through 79-14-1301 by Section 1 of Chapter 453, Laws of 2015, effective from and after July 1, 2015.

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
79-14-101. Short title.

Sec.
79-14-102. Definitions.
79-14-103. Knowledge; notice.
79-14-104. Governing law.
79-14-105. Partnership agreement; scope, function, and limitations.
79-14-106. Partnership agreement; effect on limited partnership and person becoming partner; preformation agreement.
79-14-107. Partnership agreement; effect on third parties and relationship to records effective on behalf of limited partnership.
79-14-108. Required information.
79-14-109. Dual capacity.
79-14-110. Nature, purpose, and duration of limited partnership.
79-14-111. Powers.
79-14-112. Application to existing relationships.
79-14-113. Supplemental principles of law.
79-14-114. Permittee names.
79-14-115. Reservation of name.
79-14-116 through 79-14-120. [Reserved].
79-14-117. [Reserved].
79-14-118. [Reserved].
79-14-119. [Reserved].
79-14-120. [Reserved].
79-14-121. Service of process, notice, or demand.
79-14-122. Delivery of record.

§ 79-14-101. Short title.

This chapter may be cited as the Mississippi Uniform Limited Partnership Act.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-101 [Laws, 1987, ch. 488, § 101; Laws, 1997, ch. 418, § 12; Laws, 2000, ch. 469, § 40; Laws, 2014, ch. 399, § 41, effective from and after January 1, 2015; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided definitions of terms used in the chapter. For present similar provisions, see § 79-14-102.

Comparable Laws from other States — Alabama: Code of Ala. § 10-9B-101 et seq.
Alaska: Alaska Stat. § 32.11.010 et seq.
Arizona: A.R.S. § 29-301 et seq.
Arkansas: A.C.A. § 4-47-101 et seq.
California: Cal Corp. Code § 15900 et seq.
Colorado: C.R.S. 7-62-101 et seq.
Connecticut: Conn. Gen. Stat. § 34-9 et seq.
Delaware: 6 Del. C. § 17-101 et seq.
District of Columbia: D.C. Code § 33-201.01 et seq.
Florida: Fla. Stat. § 620.1101 et seq.
Georgia: O.C.G.A. § 14-9-100 et seq.
Hawaii: HRS § 425E-101 et seq.
Idaho: Idaho Code § 53-2-101 et seq.
Illinois: 805 ILCS 210/100 et seq.
Indiana: Burns Ind. Code Ann. § 23-16-1-1.
Iowa: Iowa Code § 488.101 et seq.
Kansas: K.S.A. § 56-1a01 et seq.
Kentucky: KRS § 362.2-102 et seq.

Maine: 31 M.R.S. § 1301 et seq.
Maryland: Md. Corporations and Associations Code Ann. § 10-101 et seq.
Massachusetts: ALM GL ch. 109, § 1 et seq.
Michigan: MCLS § 449.1101 et seq.
Minnesota: Minn. Stat. §§ 321.0101 et seq. and 322A.01 et seq.
Missouri: § 359.011 R.S.Mo. et seq.
Montana: Mont. Code Anno., § 35-12-501 et seq.
Nebraska: R.R.S. Neb. § 67-233 et seq.
Nevada: NRS § 87A.005 et seq.
New Hampshire: RSA 304-B:1 et seq.
New Jersey: N.J. Stat. § 42:2A-1 et seq.
New Mexico: N.M. Stat. Ann. § 54-2A-101 et seq.
New York: NY CLS Partn. § 90.
North Carolina: N.C. Gen. Stat. § 59-101 et seq.
North Dakota: N.D. Cent. Code, § 45-10.2-01 et seq.
Ohio: ORC Ann. § 1782.01 et seq.
Oklahoma: 54 Okl. St. § 1-906 et seq.
Oregon: ORS § 70.005 et seq.
Pennsylvania: 15 Pa. C. S. § 8501 et seq.
Rhode Island: R.I. Gen. Laws § 7-13-1 et seq.
South Carolina: S.C. Code Ann. § 33-42-10 et seq.
South Dakota: S.D. Codified Laws § 48-7-101 et seq.
Tennessee: Tenn. Code Ann. § 61-2-101 et seq.
Texas: Tex. Rev. Civ. Stat. art. 6132a-1.
Utah: Utah Code Ann. § 48-2a-101 et seq.
Vermont: 11 V.S.A. § 3401 et seq.
Virgin Islands: 26 V.I.C. § 321 et seq.
Virginia: Va. Code Ann. § 50-73.1 et seq.
Washington: Rev. Code Wash. § 25.10.010 et seq.
West Virginia: W. Va. Code § 47-9-1 et seq.
Wisconsin: Wis. Stat. § 179.01 et seq.
Wyoming: Wyo. Stat. § 17-14-201 et seq.

§ 79-14-102. Definitions.

In this chapter:

(1) "Certificate of limited partnership" means the certificate required by Section 79-14-201. The term includes the certificate as amended or restated.

(2) "Contribution", except in the phrase "right of contribution," means property or a benefit described in Section 79-14-501 which is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(B) A comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a limited partnership to a person on account of a transferable interest or in the person's capacity as a partner. The term:

(A) Includes:

(i) A redemption or other purchase by a limited partnership of a transferable interest; and

(ii) A transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's activities and affairs or to have access to records or other information concerning the partnership's activities and affairs; and

(B) Does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to Section 79-14-404(c).

(6) "Foreign limited partnership" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited partnership if formed under the law of this state. The term includes a foreign limited liability limited partnership.

(7) "General partner" means a person that:

(A) Has become a general partner under Section 79-14-401 or was a general partner in a partnership when the partnership became subject to this chapter under Section 79-14-112; and

(B) Has not dissociated as a general partner under Section 79-14-603.

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of an entity.

(10) "Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership" and in Article 11, means a limited partnership whose certificate of limited partnership states that the partnership is a limited liability limited partnership.

(11) "Limited partner" means a person that:

(A) Has become a limited partner under Section 79-14-301 or was a limited partner in a limited partnership when the partnership became subject to this chapter under Section 79-14-112; and

(B) Has not dissociated under Section 79-14-601.

(12) "Limited partnership," except in the phrase "foreign limited partnership" and in Article 11, means an entity formed under this chapter or which becomes subject to this chapter under Article 11 or Section 79-14-112. The term includes a limited liability limited partnership.

(13) "Partner" means a limited partner or general partner.

(14) "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in a record, or in any combination thereof, of all the partners of a limited

partnership concerning the matters described in Section 79-14-105(a). The term includes the agreement as amended or restated.

(15) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, agricultural association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(16) "Principal office" means the principal executive office of a limited partnership or foreign limited partnership, whether or not the office is located in this state.

(17) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(18) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(19) "Registered agent" means an agent of a limited partnership or foreign limited partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the partnership.

(20) "Registered foreign limited partnership" means a foreign limited partnership that is registered to do business in this state pursuant to a statement of registration filed by the Secretary of State.

(21) "Required information" means the information that a limited partnership is required to maintain under Section 79-14-108.

(22) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(24) "Transfer" includes:

(A) An assignment;

(B) A conveyance;

(C) A sale;

(D) A lease;

(E) An encumbrance, including a mortgage or security interest;

(F) A gift; and

(G) A transfer by operation of law.

(25) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a limited partnership, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(26) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. The term includes a person that owns a transferable interest under Section 79-14-602(a)(3) or 79-14-605(a)(4).

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-102 [Laws, 1987, ch. 488, § 102; Laws, 1990, ch. 385, § 1, effective from and after passage (approved March 13, 1990); Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided certain requirements regarding the name of a limited partnership. For present similar provisions, see § 79-14-114.

§ 79-14-103. Knowledge; notice.

(a) A person knows a fact if the person:

(1) Has actual knowledge of it; or

(2) Is deemed to know it under law other than this chapter.

(b) A person has notice of a fact if the person:

(1) Has reason to know the fact from all the facts known to the person at the time in question; or

(2) Is deemed to have notice of the fact under subsection (c) or (d).

(c) A certificate of limited partnership on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (d), the certificate is not notice of any other fact.

(d) A person not a partner is deemed to have notice of:

(1) Another person's dissociation as a general partner, ninety (90) days after an amendment to the certificate of limited partnership which states that the other person has dissociated becomes effective, or ninety (90) days after a statement of dissociation pertaining to the other person becomes effective, whichever occurs first;

(2) A limited partnership's:

(A) Dissolution, ninety (90) days after the statement of dissolution becomes effective;

(B) Participation in a conversion or domestication under the Mississippi Entity Conversion and Domestication Act, ninety (90) days after the effective date of statement of conversion or domestication.

(C) Participation in a merger under Article 11, ninety (90) days after the effective date of the articles of merger.

(e) Subject to Section 79-14-210(f), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(f) A general partner's knowledge or notice of a fact relating to the limited partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of the general partner. A limited partner's knowledge or notice of a fact

relating to the partnership is not effective as knowledge of or notice to the partnership.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-103 [Laws, 1987, ch. 488, § 103; Laws, 2014, ch. 468, § 3, effective from and after July 1, 2014; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the reservation of a legal name that complied with former § 79-14-102. For present similar provisions, see § 79-14-115.

Cross References — Mississippi Entity Conversion and Domestication Act, see § 79-37-101 et seq.

§ 79-14-104. Governing law.

The law of this state governs:

(1) The internal affairs of a limited partnership; and

(2) The liability of a partner as partner for a debt, obligation, or other liability of a limited partnership.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-104 [Laws, 1987, ch. 488, § 104; Laws, 2012, ch. 382, § 86, effective from and after January 1, 2013; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] required a limited partnership to have and maintain an office in the State of Mississippi.

§ 79-14-105. Partnership agreement; scope, function, and limitations.

(a) Except as otherwise provided in subsections (c) and (d), the partnership agreement governs:

(1) Relations among the partners as partners and between the partners and the limited partnership;

(2) The activities and affairs of the partnership and the conduct of those activities and affairs; and

(3) The means and conditions for amending the partnership agreement.

(b) To the extent the partnership agreement does not provide for a matter described in subsection (a), this chapter governs the matter.

(c) A partnership agreement may not:

(1) Vary the law applicable under Section 79-14-104;

(2) Vary a limited partnership's capacity under Section 79-14-111 to sue and be sued in its own name;

(3) Vary any requirement, procedure, or other provision of this chapter pertaining to:

(A) Registered agents; or

(B) The Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under this chapter;

(4) Vary the provisions of Section 79-14-204;

(5) Vary the right of a general partner under Section 79-14-406(b)(2) to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;

(6) Alter or eliminate the duty of loyalty or the duty of care except as otherwise provided in subsection (d);

(7) Eliminate the contractual obligation of good faith and fair dealing under Sections 79-14-305(a) and 79-14-409(d), but the partnership agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

(8) Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

(9) Vary the information required under Section 79-14-108 or unreasonably restrict the duties and rights under Section 79-14-304 or 79-14-407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(10) Vary the grounds for expulsion stated in Section 79-14-603(5)(B);

(11) Vary the power of a person to dissociate as a general partner under Section 79-14-604(a), except to require that the notice under Section 79-14-603(1) be in a record;

(12) Vary the causes of dissolution specified in Section 79-14-801(a)(6);

(13) Vary the requirement to wind up the partnership's activities and affairs as specified in Section 79-14-802(a), (b)(1), and (d);

(14) Unreasonably restrict the right of a partner to maintain an action under Article 9;

(15) Vary the provisions of Section 79-14-905, but the partnership agreement may provide that the partnership may not have a special litigation committee;

(16) Vary the right of a partner to approve a conversion or domestication under the Mississippi Entity Conversion and Domestication Act;

(17) Vary the required contents of a plan of merger under Article 11 or plan of conversion or plan of domestication under the Mississippi Entity Conversion and Domestication Act; or

(18) Except as otherwise provided in Sections 79-14-106 and 79-14-107(b), restrict the rights under this chapter of a person other than a partner.

(d) Subject to subsection (c)(8), without limiting other terms that may be included in a partnership agreement, the following rules apply:

(1) The partnership agreement may:

(A) Specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; and

(B) Alter the prohibition in Section 79-14-504(a)(2) so that the prohi-

bition requires only that the partnership's total assets not be less than the sum of its total liabilities.

(2) If not manifestly unreasonable, the partnership agreement may:

(A) Alter or eliminate the aspects of the duty of loyalty stated in Section 79-14-409(b);

(B) Identify specific types or categories of activities that do not violate the duty of loyalty;

(C) Alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law; and

(D) Alter or eliminate any other fiduciary duty.

(e) The court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subsection (c)(7) or (d)(2). The court:

(1) Shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) May invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:

(A) The objective of the term is unreasonable; or

(B) The term is an unreasonable means to achieve its objective.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-105 [Laws, 1987, ch. 488, § 105; Laws, 2014, ch. 399, § 42, effective from and after January 1, 2015; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the records a limited partnership was required to keep at its office. For present similar provisions, see § 79-14-108.

Cross References — Mississippi Entity Conversion and Domestication Act, see § 79-37-101 et seq.

JUDICIAL DECISIONS

3. Required filing with Secretary of State.

Deceased general partner did not validly assign a general partnership interest to a conservator because a schedule listing the conservator as a general partner was not filed with the Secretary of State, as the limited partnership agreement, Miss. Code Ann. § 79-14-105(c)(3)(B), and former Miss. Code Ann. § 79-14-202(c)(1) [now § 79-14-202(d)(1)] required. Smith v. Maggie Mae, L.P., 225 So. 3d 1243, 2016 Miss. App. LEXIS 267 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1149, 2017 Miss. LEXIS 213 (Miss. 2017).

§ 79-14-106. Partnership agreement; effect on limited partnership and person becoming partner; preformation agreement.

(a) A limited partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the agreement.

(b) A person that becomes a partner is deemed to assent to the partnership agreement.

(c) Two (2) or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-106 [Laws, 1987, ch. 488, § 106, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided that a limited partnership could carry on any business that a partnership without limited partners could carry on.

§ 79-14-107. Partnership agreement; effect on third parties and relationship to records effective on behalf of limited partnership.

(a) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under Section 79-14-703(b)(2) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) Is effective with regard to any debt, obligation, or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(2) Is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner.

(c) If a record delivered by a limited partnership to the Secretary of State for filing becomes effective and contains a provision that would be ineffective under Section 79-14-105(c) or (d)(2) if contained in the partnership agreement, the provision is ineffective in the record.

(d) Subject to subsection (c), if a record delivered by a limited partnership to the Secretary of State for filing becomes effective and conflicts with a provision of the partnership agreement:

(1) The agreement prevails as to partners, persons dissociated as partners, and transferees; and

(2) The record prevails as to other persons to the extent they reasonably rely on the record.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-107 [Laws, 1987, ch. 488, § 107, effective from

and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to business transactions of a partner with the partnership.

§ 79-14-108. Required information.

A limited partnership shall maintain at its principal office the following information:

(1) A current list showing the full name and last-known street and mailing addresses of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) A copy of any filed articles of merger, conversion, or domestication;

(4) A copy of the partnership's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

(5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) A copy of any financial statement of the partnership for the three (3) most recent years;

(7) Reserved;

(8) A copy of any record made by the partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement;

(9) A copy of any statement of conversion or domestication filed under the Mississippi Entity Conversion and Domestication Act; and

(10) Unless contained in a partnership agreement made in a record, a record stating:

(A) A description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

(B) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(C) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(D) Any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-108 [Laws, 1987, ch. 488, § 108, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to indemnification. For present similar provisions relating to indemnification, see § 79-14-408.

§ 79-14-109. Dual capacity.

A person may be both a general partner and a limited partner. A person

that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-110. Nature, purpose, and duration of limited partnership.

(a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may have any lawful purpose, regardless of whether for profit.

(c) A limited partnership has perpetual duration, unless otherwise specified in the partnership agreement.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-111. Powers.

A limited partnership has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-112. Application to existing relationships.

(a) Before January 1, 2017, this chapter governs only:

(1) A limited partnership formed on or after July 1, 2015; and

(2) Except as otherwise provided in subsections (c) and (d), a limited partnership formed before July 1, 2015, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(b) Except as otherwise provided in subsections (c) and (d), on and after January 1, 2017, this chapter governs all limited partnerships.

(c) With respect to a limited partnership formed before July 1, 2015, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Section 79-14-110(c) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2015.

(2) The limited partnership is not required to amend its certificate of limited partnership to comply with Section 79-14-201(b)(5).

(3) Sections 79-14-601 and 79-14-602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before July 1, 2015.

(4) Section 79-14-603(4) does not apply.

(5) Section 79-14-603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2015.

(6) Section 79-14-801(a)(3) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2015.

(d) With respect to a limited partnership that elects pursuant to subsection (a)(2) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(1) Before January 1, 2017, to:

(A) A third party that had not done business with the limited partnership in the year before the election took effect; and

(B) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has been notified of the election; and

(2) On and after January 1, 2017, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(B).

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-113. Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-114. Permittee names.

(a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the words "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.".

(c) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "LP" or "L.P.".

(d) Except as otherwise provided in subsection (g), the name of a limited partnership, and the name under which a foreign limited partnership may

register to do business in this state, must be distinguishable on the records of the Secretary of State from any:

(1) Name of an existing person whose formation required the filing of a record by the Secretary of State and which is not at the time administratively dissolved;

(2) Name of a limited liability partnership whose statement of qualification is in effect;

(3) Name under which a person is registered to do business in this state by the filing of a record by the Secretary of State;

(4) Name reserved under Section 79-14-115 or other law of this state providing for the reservation of a name by the filing of a record by the Secretary of State; and

(5) Name registered under the Fictitious Business Name Registration Act.

(e) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from any name in any category of names in subsection (d), the name of the consenting person may be used by the person to which the consent was given.

(f) Except as otherwise provided in subsection (g), in determining whether a name is the same as or not distinguishable on the records of the Secretary of State from the name of another person, words, phrases, or abbreviations indicating the type of person, such as "corporation," "corp.," "incorporated," "Inc.," "professional corporation," "PC," "P.C.," "professional association," "PA," "P.A.," "Limited," "Ltd.," "limited partnership," "LP," "L.P.," "limited liability partnership," "LLP" "L.L.P.," "registered limited liability partnership," "RLLP," "R.L.L.P.," "limited liability limited partnership," "LLLP," "L.L.L.P.," "registered limited liability limited partnership," "RLLLP," "R.L.L.L.P.," "limited liability company," "LLC," "L.L.C.," "limited cooperative association," "limited cooperative," "LCA," or "L.C.A." may not be taken into account.

(g) A person may consent in a record to the use of a name that is not distinguishable on the records of the Secretary of State from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in subsection (f). In such a case, the person need not change its name pursuant to subsection (e).

(h) The name of a limited partnership may not contain the words "bank," "banker," "bankers," "banking," "trust company," "insurance," "trust," "corporation," "incorporated," or any combination thereof, or any words of similar import.

(i) A limited partnership or foreign limited partnership may use a name that is not distinguishable from a name described in subsection (d)(1) through (5) if:

(1) The partnership delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the partnership to use the name in this state; or

(2) The other limited partnership or person consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary

of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-115. Reservation of name.

(a) A person may reserve the exclusive use of a legal name that complies with Section 79-14-114 by delivering an application to the Secretary of State for filing. The application must state the name and addresses of the applicant and the name to be reserved. If the Secretary of State finds that the name is available, the Secretary of State shall reserve the name for the applicant's exclusive use for one hundred eighty (180) days. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the Secretary of State a signed notice in a record of the transfer which states the name and address of the person to which the reservation is being transferred.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§§ 79-14-116 through 79-14-120. [Reserved].

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-121. Service of process, notice, or demand.

Notice or demand required or permitted by law on a limited partnership or foreign limited partnership authorized to transact business in this state is governed by Section 79-35-13. Service of process is governed by the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-122. Delivery of record.

(a) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice, and electronic transmission.

(b) Delivery to the Secretary of State is effective only when a record is received by the Secretary of State.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 2.

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS.

Sec.

79-14-201. Formation of limited partnership; certificate of limited partnership.
79-14-202. Amendment or restatement of certificate of limited partnership.
79-14-203. Signing of records to be delivered for filing to Secretary of State.
79-14-204. Signing and filing pursuant to judicial order.
79-14-205. Liability for inaccurate information in filed record.
79-14-206. Filing requirements.
79-14-207. Effective date and time.
79-14-208. Withdrawal of filed record before effectiveness.
79-14-209. Correcting filed record.
79-14-210. Duty of Secretary of State to file; review of refusal to file; delivery of record by Secretary of State.
79-14-211. Certificate of good standing or registration.

§ 79-14-201. Formation of limited partnership; certificate of limited partnership.

(a) To form a limited partnership, a person must deliver a certificate of limited partnership to the Secretary of State for filing.

(b) A certificate of limited partnership must state:

(1) The name of the limited partnership, which must comply with Section 79-14-114;

(2) The information required by Section 79-35-5;

(3) The street and mailing addresses of the limited partnership's principal office;

(4) The street and mailing addresses of each general partner; and

(5) Whether the limited partnership is a limited liability limited partnership.

(c) A certificate of limited partnership may contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified in Section 79-14-105(c) and (d) in a manner inconsistent with that section.

(d) A limited partnership is formed when:

(1) The certificate of limited partnership becomes effective:

(2) At least two (2) persons have become partners;

(3) At least one (1) person has become a general partner; and

(4) At least one (1) person has become a limited partner.

(e) Subject to subsection (b) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership, or with a filed statement of dissociation, termination, or change, or with filed articles of merger, or with a statement of conversion or domestication filed under the Mississippi Entity Conversion and Domestication Act:

(1) The partnership agreement shall prevail as to partners and transferees; and

(2) The filed document prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-201 [Laws, 1987, ch. 488, § 201; Laws, 1997, ch. 418, § 13; Laws, 2012, ch. 382, § 87; Laws, 2014, ch. 399, § 43, effective from and after January 1, 2015; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the certificate of limited partnership. Present similar provisions are found in current § 79-14-201, above.

§ 79-14-202. Amendment or restatement of certificate of limited partnership.

(a) A certificate of limited partnership may be amended or restated at any time.

(b) To amend its certificate of limited partnership, a limited partnership must deliver to the Secretary of State for filing an amendment stating:

(1) The name of the limited partnership;

(2) The date of filing of its initial certificate; and

(3) The amendment.

(c) To restate its certificate of limited partnership, a limited partnership must deliver to the Secretary of State for filing a restatement, designated as such in its heading.

(d) A limited partnership shall promptly deliver to the Secretary of State for filing an amendment to a certificate of limited partnership to reflect:

(1) The admission of a new general partner;

(2) The dissociation of a person as a general partner; or

(3) The appointment of a person to wind up the limited partnership's activities and affairs under Section 79-14-802(c) or (d).

(e) If a general partner knows that any information in a filed certificate of limited partnership was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the general partner shall promptly:

(1) Cause the certificate to be amended; or

(2) If appropriate, deliver to the Secretary of State for filing a statement of change under Section 79-35-8 or a statement of correction under Section 79-14-209.

(f) A certificate of limited partnership may also be amended by filing articles of merger under Article 11 or a statement of conversion, or domestication under the Mississippi Entity Conversion and Domestication Act.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-202 [Laws, 1987, ch. 488, § 202; Laws, 1997, ch. 418, § 14; Laws, 2012, ch. 382, § 88; Laws, 2014, ch. 399, § 44, effective from and after January 1, 2015; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the amendment of a certificate of limited partnership. Present similar provisions are found in current § 79-14-202, above.

Cross References — Mississippi Entity Conversion and Domestication Act, see § 79-37-101 et seq.

JUDICIAL DECISIONS

3. Required filing with Secretary of State.

Deceased general partner did not validly assign a general partnership interest to a conservator because a schedule listing the conservator as a general partner was not filed with the Secretary of State, as the limited partnership agreement, Miss. Code Ann. § 79-14-105(c)(3)(B), and former Miss. Code Ann. § 79-14-202(c)(1) [now § 79-14-202(d)(1)] required. Smith v. Maggie Mae, L.P., 225 So. 3d 1243, 2016 Miss. App. LEXIS 267 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1149, 2017 Miss. LEXIS 213 (Miss. 2017).

§ 79-14-203. Signing of records to be delivered for filing to Secretary of State.

(a) A record delivered to the Secretary of State for filing pursuant to this chapter must be signed as follows:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(3) An amendment to the certificate of limited partnership designating as general partner a person admitted under Section 79-14-801(a)(3)(B) following the dissociation of a limited partnership's last general partner must be signed by that person.

(4) An amendment to the certificate of limited partnership required by Section 79-14-802(c) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person.

(5) Any other amendment to the certificate of limited partnership must be signed by:

(A) At least one (1) general partner listed in the certificate;

(B) Each other person designated in the amendment as a new general partner; and

(C) Each person that the amendment indicates has dissociated as a general partner, unless:

(i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(ii) The person has previously delivered to the Secretary of State for filing a statement of dissociation.

(6) A restated certificate of limited partnership must be signed by at least one (1) general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph.

(7) A statement of dissolution must be signed by all general partners listed in the certificate of limited partnership or, if the limited partnership lists no general partners, by the person appointed pursuant to Section 79-14-802(c) or (d) to wind up the dissolved limited partnership's activities and affairs.

(8) Any other record delivered by a limited partnership to the Secretary of State for filing must be signed by at least one (1) general partner listed in the certificate of limited partnership.

(9) A statement by a person pursuant to Section 79-14-605(a)(3) stating that the person has dissociated as a general partner must be signed by that person.

(10) A statement of negation by a person pursuant to Section 79-14-306 must be signed by that person.

(11) Any other record delivered on behalf of a person to the Secretary of State for filing must be signed by that person.

(b) Any record delivered for filing under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(c) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-203 [Laws, 1987, ch. 488, § 203; Laws, 1997, ch. 418, § 15, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the dissolution and cancellation of a limited partnership. For present provisions relating to dissolution of a limited partnership, see §§ 79-14-801 through 79-14-813.

§ 79-14-204. Signing and filing pursuant to judicial order.

(a) If a person required by this chapter to sign a record or deliver a record to the Secretary of State for filing under this chapter does not do so, any other person that is aggrieved may petition the Chancery Court of the First Judicial District of Hinds County, Mississippi to order:

(1) The person to sign the record;

(2) The person to deliver the record to the Secretary of State for filing; or

(3) The Secretary of State to file the record unsigned.

(b) If a petitioner under subsection (a) is not the limited partnership or foreign limited partnership to which the record pertains, the petitioner shall make the partnership or foreign partnership a party to the action.

(c) A record filed under subsection (a)(3) is effective without being signed.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-204 [Laws, 1987, ch. 488, § 204; Laws, 1994, ch. 417, § 6; Laws, 1995, ch. 362, § 3; Laws, 1997, ch. 418, § 16; Laws, 2014, ch. 399, § 45,

effective from and after January 1, 2015; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the execution of a certificate of limited partnership. For present similar provisions, see § 79-14-203.

§ 79-14-205. Liability for inaccurate information in filed record.

(a) If a record delivered to the Secretary of State for filing under this chapter and filed by the Secretary of State contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) A general partner if:

(A) The record was delivered for filing on behalf of the partnership; and

(B) The general partner knew or had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the general partner reasonably could have:

(i) Effected an amendment under Section 79-14-202;

(ii) Filed a petition under Section 79-14-204; or

(iii) Delivered to the Secretary of State for filing a statement of change under Section 79-35-8 or a statement of correction under Section 79-14-209.

(b) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-205 [Laws, 1987, ch. 488, § 205, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to amendment, dissolution or cancellation by judicial act. For present similar provisions, see § 79-14-204.

§ 79-14-206. Filing requirements.

(a) To be filed by the Secretary of State pursuant to this chapter, a record must be received by the Secretary of State, must comply with this chapter, and satisfy the following:

(1) The filing of the record must be required or permitted by this chapter.

(2) The record must be physically delivered in written form unless and to the extent the Secretary of State permits electronic delivery of records.

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The record must be signed by a person authorized or required under this chapter to sign the record.

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this chapter prohibits the disclosure by the Secretary of State of information contained in a record delivered to the Secretary of State for filing, the Secretary of State shall file the record if the record otherwise complies with this chapter but may redact the information.

(c) When a record is delivered to the Secretary of State for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the Secretary of State or by that law.

(d) The Secretary of State may require that a record delivered in written form be accompanied by an identical or conformed copy.

(e) The Secretary of State may provide forms for filings required or permitted to be made by this chapter, but, except as otherwise provided in subsection (f), their use is not required.

(f) The Secretary of State may require that a cover sheet for a filing be on a form prescribed by the Secretary of State.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-206 [Laws, 1987, ch. 488, § 206; Laws, 1990, ch. 385, § 2; Laws, 1995, ch. 362, § 4; Laws, 1997, ch. 418, § 17, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the filing of a certificate of limited partnership and certificates of amendment, dissolution or cancellation with the Secretary of State. For present similar provisions, see § 79-14-210.

§ 79-14-207. Effective date and time.

Except as otherwise provided in Section 79-14-208 and subject to Section 79-14-209(d), a record filed under this chapter is effective:

(1) On the date and at the time of its filing by the Secretary of State, as provided in Section 79-14-210(b);

(2) On the date of filing and at the time specified in the record as its effective time, if later than the time under paragraph (1);

(3) At a specified delayed effective date and time, which may not be more than ninety (90) days after the date of filing; or

(4) If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than ninety (90) days after the date of filing.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-207 [Laws, 1987, ch. 488, § 207; Laws, 1997, ch. 418, § 18; Laws, 2012, ch. 382, § 89, effective from and after January 1, 2013; Repealed

by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to liability for false statements in a certificate of limited partnership or certificate of amendment, dissolution or cancellation. For present similar provisions, see § 79-14-205.

§ 79-14-208. Withdrawal of filed record before effectiveness.

(a) Except as otherwise provided in Article 11, or the Mississippi Entity Conversion and Domestication Act, a record delivered to the Secretary of State for filing may be withdrawn before it takes effect by delivering to the Secretary of State for filing a statement of withdrawal.

(b) A statement of withdrawal must:

(1) Be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(2) Identify the record to be withdrawn; and

(3) If signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(c) On filing by the Secretary of State of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-208 [Laws, 1987, ch. 488, § 208, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided that a certificate of limited partnership on file with the office of the Secretary of State was notice that the partnership was a limited partnership and that a person designated in the certificate as general partner was a general partner. For present similar provisions, see § 79-14-103.

Cross References — Mississippi Entity Conversion and Domestication Act, see § 79-37-101 et seq.

§ 79-14-209. Correcting filed record.

(a) A person on whose behalf a filed record was delivered to the Secretary of State for filing may correct the record if:

(1) The record at the time of filing was inaccurate;

(2) The record was defectively signed; or

(3) The electronic transmission of the record to the Secretary of State was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the Secretary of State must deliver to the Secretary of State for filing a statement of correction.

(c) A statement of correction:

(1) May not state a delayed effective date;

(2) Must be signed by the person correcting the filed record;

(3) Must identify the filed record to be corrected;

(4) Must specify the inaccuracy or defect to be corrected; and

(5) Must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Section 79-14-103(d) and as to

persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-209 [Laws, 1987, ch. 488, § 209; Laws, 1997, ch. 418, § 19, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the delivery of certificates of limited partnership to limited partners.

§ 79-14-210. Duty of Secretary of State to file; review of refusal to file; delivery of record by Secretary of State.

(a) The Secretary of State shall file a record delivered to the Secretary of State for filing which satisfies this chapter. The duty of the Secretary of State under this section is ministerial.

(b) When the Secretary of State files a record, the Secretary of State shall record it as filed on the date and at the time of its delivery. After filing a record, the Secretary of State shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a record, the Secretary of State shall, not later than fifteen (15) business days after the record is delivered:

(1) Return the record or notify the person that submitted the record of the refusal; and

(2) Provide a brief explanation in a record of the reason for the refusal.

(d) If the Secretary of State refuses to file a record, the person that submitted the record may petition the Chancery Court of the First Judicial District of Hinds County, Mississippi, to compel filing of the record. The record and the explanation of the Secretary of State of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(e) The filing of or refusal to file a record does not:

(1) Affect the validity or invalidity of record in whole or in part; or

(2) Create a presumption that the information contained in the record is correct or incorrect.

(f) Except as otherwise provided by Section 79-35-13 or by law other than this chapter, the Secretary of State may deliver any record to a person by delivering it:

(1) In person to the person that submitted it;

(2) To the address of the person's registered agent;

(3) To the principal office of the person; or

(4) To another address the person provides to the Secretary of State for delivery.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-210 [Laws, 1987, ch. 488, § 210; Laws, 1997, ch. 418, § 20, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6,

effective from and after July 1, 2015.] related to restated certificates of limited partnership.

§ 79-14-211. Certificate of good standing or registration.

(a) On request of any person, the Secretary of State shall issue a certificate of good standing for a limited partnership or a certificate of registration for a registered foreign limited partnership.

(b) A certificate under subsection (a) must state:

(1) The limited partnership's name or the registered foreign limited partnership's name used in this state;

(2) In the case of a limited partnership:

(A) That a certificate of limited partnership has been filed and has taken effect;

(B) The date the certificate became effective;

(C) The period of the partnership's duration if the records of the Secretary of State reflect that its period of duration is less than perpetual; and

(D) That:

(i) No statement of dissolution or statement of administrative dissolution has been filed;

(ii) The records of the Secretary of State do not otherwise reflect that the partnership has been dissolved or terminated; and

(iii) A proceeding is not pending under Section 79-14-811;

(3) In the case of a registered foreign limited partnership, that it is registered to do business in this state;

(4) That all fees, taxes, interest, and penalties owed to this state by the limited partnership or the foreign partnership and collected through the Secretary of State have been paid, if:

(A) Payment is reflected in the records of the Secretary of State; and

(B) Nonpayment affects the good standing or registration of the partnership or foreign partnership; and

(5) Other facts reflected in the records of the Secretary of State pertaining to the limited partnership or foreign limited partnership which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the Secretary of State under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-211 [Laws, 1987, ch. 488, § 211; Laws, 2000, ch. 469, § 41, effective from and after July 1, 2000; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the merger and consolidation of a limited partnership. For present similar provisions relating to mergers, see §§ 79-14-1101 through 79-14-1113.

ARTICLE 3.

LIMITED PARTNERS.

Sec.
79-14-301. Becoming limited partner.
79-14-302. No agency power of limited partner as limited partner.
79-14-303. No liability as limited partner for limited partnership obligations.
79-14-304. Rights to information of limited partner and person dissociated as limited partner.
79-14-305. Limited duties of limited partners.
79-14-306. Person erroneously believing self to be limited partner.

§ 79-14-301. Becoming limited partner.

(a) Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

(b) After formation, a person becomes a limited partner:

(1) As provided in the partnership agreement;

(2) As the result of a transaction effective under Article 11;

(3) With the affirmative vote or consent of all the partners; or

(4) As provided in Section 79-14-801(a)(4) or (a)(5).

(c) A person may become a limited partner without:

(1) Acquiring a transferable interest; or

(2) Making or being obligated to make a contribution to the limited partnership.

HISTORY: Laws, 2015, ch. 453, § 1, effective July 1, 2015.

Editor's Notes — A former § 79-14-301 [Laws, 1987, ch. 488, § 301, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to admission of limited partners.

§ 79-14-302. No agency power of limited partner as limited partner.

(a) A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.

(b) A person's status as a limited partner does not prevent or restrict law other than this chapter from imposing liability on a limited partnership because of the person's conduct.

HISTORY: Laws, 2015, ch. 453, § 1, eff from July 1, 2015.

Editor's Notes — A former § 79-14-302 [Laws, 1987, ch. 488, § 302, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to classes or groups of limited partners.

§ 79-14-303. No liability as limited partner for limited partnership obligations.

(a) A debt, obligation, or other liability of a limited partnership is not the

debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership. This subsection applies regardless of the dissolution of the partnership.

(b) The failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-303 [Laws, 1987, ch. 488, § 303, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the liability of limited partners to third parties.

§ 79-14-304. Rights to information of limited partner and person dissociated as limited partner.

(a) On ten (10) days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(b) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the limited partnership as is just and reasonable if:

(1) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) The information sought is directly connected to the limited partner's purpose.

(c) Not later than ten (10) days after receiving a demand pursuant to subsection (b), the limited partnership shall inform in a record the limited partner that made the demand of:

(1) What information the partnership will provide in response to the demand and when and where the partnership will provide the information; and

(2) The partnership's reasons for declining, if the partnership declines to provide any demanded information.

(d) Whenever this chapter or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall,

without demand, provide the limited partner with all information that is known to the partnership and is material to the limited partner's decision.

(e) Subject to subsection (j), on ten (10) days' demand made in a record received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:

(1) The information pertains to the period during which the person was a limited partner;

(2) The person seeks the information in good faith; and

(3) The person satisfies the requirements imposed on a limited partner by subsection (b).

(f) A limited partnership shall respond to a demand made pursuant to subsection (e) in the manner provided in subsection (c).

(g) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(h) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or legal representative and to the limited partner or person dissociated as a limited partner.

(i) Subject to Section 79-14-704, the rights under this section do not extend to a person as transferee.

(j) In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-304 [Laws, 1987, ch. 488, § 304, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to persons who make contributions to business enterprises and erroneously believe in good faith that they are limited partners. For present similar provisions, see § 79-14-306.

§ 79-14-305. Limited duties of limited partners.

(a) A limited partner shall discharge any duties to the partnership and the other partners under the partnership agreement and exercise any rights under this chapter or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

(b) Except as otherwise provided in subsection (a), a limited partner does

not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

(c) If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-305 [Laws, 1987, ch. 488, § 305, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to rights to information of limited partners. For present similar provisions, see § 79-14-304.

§ 79-14-306. Person erroneously believing self to be limited partner.

(a) Except as otherwise provided in subsection (b), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(1) Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Secretary of State for filing; or

(2) Withdraws from future participation as an owner in the enterprise by signing and delivering to the Secretary of State for filing a statement of negation under this section.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the Secretary of State files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subsection (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Secretary of State for filing, the person has the right to withdraw from the enterprise pursuant to subsection (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 4.

GENERAL PARTNERS.

Sec.
79-14-401. Becoming general partner.

Sec.
79-14-402. General partner agent of limited partnership.
79-14-403. Limited partnership liable for general partner's actionable conduct.
79-14-404. General partner's liability.
79-14-405. Actions by and against partnership and partners.
79-14-406. Management rights of general partner.
79-14-407. Rights to information of general partner and person dissociated as general partner.
79-14-408. Reimbursement; indemnification; advancement; and insurance.
79-14-409. Standards of conduct for general partners.

§ 79-14-401. Becoming general partner.

(a) Upon formation of a limited partnership, a person becomes a general partner as agreed among the persons that are to be the initial partners.

(b) After formation of a limited partnership, a person becomes a general partner:

(1) As provided in the partnership agreement;

(2) As the result of a transaction effective under Article 11;

(3) With the affirmative vote or consent of all the partners; or

(4) Under Section 79-14-801(a)(3)(B) following the dissociation of a limited partnership's last general partner.

(c) A person may become a general partner without:

(1) Acquiring a transferable interest; or

(2) Making or being obligated to make a contribution to the partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-401 [Laws, 1987, ch. 488, § 401, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the admission of additional general partners. Present similar provisions are found in current § 79-14-401, above.

§ 79-14-402. General partner agent of limited partnership.

(a) Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership binds the partnership, unless the general partner did not have authority to act for the partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.

(b) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the partnership binds the partnership only if the act was actually authorized by all the other partners.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-402 [Laws, 1987, ch. 488, § 402, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to events upon the occurrence of which a person ceases to be a general partner of a limited partnership. For present similar provisions relating to dissociation as a general partner, see § 79-14-603.

§ 79-14-403. Limited partnership liable for general partner's actionable conduct.

(a) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities and affairs of the partnership or with the actual or apparent authority of the partnership.

(b) If, in the course of a limited partnership's activities and affairs or while acting with actual or apparent authority of the partnership, a general partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the partnership is liable for the loss.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-403 [Laws, 1987, ch. 488, § 403, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the general powers and liabilities of general partners. For present similar provisions, see §§ 79-14-404, 79-14-405 and 79-14-406.

§ 79-14-404. General partner's liability.

(a) Except as otherwise provided in subsections (b) and (c), all general partners are liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner is not personally liable for a debt, obligation, or other liability of the limited partnership incurred before the person became a general partner.

(c) A debt, obligation, or other liability of a limited partnership incurred while the partnership is a limited liability limited partnership is solely the debt, obligation, or other liability of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability limited partnership solely by reason of being or acting as a general partner. This subsection applies:

(1) Despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability limited partnership under Section 79-14-406(b)(2); and

(2) Regardless of the dissolution of the partnership.

(d) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities

and affairs is not a ground for imposing liability on a general partner for a debt, obligation, or other liability of the partnership.

(e) An amendment of a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on the liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-404 [Laws, 1987, ch. 488, § 404, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to contributions by a general partner. For present similar provisions relating to contributions and distributions, see §§ 79-14-501 through 79-14-505.

Cross References — If a claim against a dissolved limited partnership is barred under Section 79-14-806, 79-14-807, or 79-14-808, any corresponding claim under Section 79-14-404 or 79-14-607 is also barred, see § 79-14-809.

§ 79-14-405. Actions by and against partnership and partners.

(a) To the extent not inconsistent with Section 79-14-404, a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(c) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under Section 79-14-404 and:

(1) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The general partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the general partner by law or contract independent of the existence of the partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-405 [Laws, 1987, ch. 488, § 405, effective from

and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to classes and groups of general partners.

§ 79-14-406. Management rights of general partner.

(a) Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Except as otherwise provided in this chapter, any matter relating to the activities and affairs of the partnership is decided exclusively by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The affirmative vote or consent of all the partners is required to:

(1) Amend the partnership agreement;

(2) Amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership; and

(3) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities and affairs.

(c) A limited partnership shall reimburse a general partner for an advance to the partnership beyond the amount of capital the general partner agreed to contribute.

(d) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (c) or Section 79-14-408(a) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(e) A general partner is not entitled to remuneration for services performed for the partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-407. Rights to information of general partner and person dissociated as general partner.

(a) A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office, without having any particular purpose for seeking the information.

(b) On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the general partner's rights and duties under the partnership agreement or this chapter.

(c) A limited partnership shall furnish to each general partner:

(1) Without demand, any information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership knows and is material to the proper exercise of the general

partner's rights and duties under the partnership agreement or this chapter, except to the extent the partnership can establish that it reasonably believes the general partner already knows the information; and

(2) On demand, any other information concerning the partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(d) The duty to furnish information under subsection (c) also applies to each general partner to the extent the general partner knows any of the information described in subsection (b).

(e) Subject to subsection (j), on ten (10) days' demand made in a record received by a limited partnership, a person dissociated as a general partner may have access to the information and records described in subsections (a) and (b) at the locations specified in those subsections if:

(1) The information or record pertains to the period during which the person was a general partner;

(2) The person seeks the information or record in good faith; and

(3) The person satisfies the requirements imposed on a limited partner by Section 79-14-304(b).

(f) A limited partnership shall respond to a demand made pursuant to subsection (e) in the manner provided in Section 79-14-304(c).

(g) A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or legal representative and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but if:

(1) A general partner dies, Section 79-14-704 applies; and

(2) An individual dissociates as a general partner under Section 79-14-603(6)(B) or (C), the legal representative of the individual may exercise the rights under subsection (c) of a person dissociated as a general partner.

(j) In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-408. Reimbursement; indemnification; advancement; and insurance.

(a) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the partnership, if the general partner complied with Sections 79-14-406, 79-14-409, and 79-14-504 in making the payment.

(b) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 79-14-406, 79-14-409, or 79-14-504.

(c) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

(d) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under Section 79-14-105(c)(8), the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-409. Standards of conduct for general partners.

(a) A general partner owes to the limited partnership and, subject to Section 79-14-901, the other partners the duties of loyalty and care stated in subsections (b) and (c).

(b) The fiduciary duty of loyalty of a general partner includes the duties:

(1) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner:

(A) In the conduct or winding up of the partnership's activities and affairs;

(B) From a use by the general partner of the partnership's property; or

(C) From the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct or winding up of the partnership's activities and affairs.

(c) The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in

grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

(d) A general partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.

(f) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership.

(h) If, as permitted by subsection (f) or the partnership agreement, a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by subsection (b)(2), the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 5.

CONTRIBUTIONS AND DISTRIBUTIONS.

Sec.

79-14-501. Form of contribution.
79-14-502. Liability for contribution.
79-14-503. Sharing of and right to distributions before dissolution.
79-14-504. Limitations on distributions.
79-14-505. Liability for improper distributions.

§ 79-14-501. Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited partnership or an agreement to transfer property to, perform services for, or provide another benefit to the partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-501 [Laws, 1987, ch. 488, § 501, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the forms of contributions of partners. Present similar provisions are found in current § 79-14-501, above.

§ 79-14-502. Liability for contribution.

(a) A person's obligation to make a contribution to a limited partnership is

not excused by the person's death, disability, termination, or other inability to perform personally.

(b) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution which has not been made.

(c) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-502 [Laws, 1987, ch. 488, § 502, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to liability for contributions. Present similar provisions are found in current § 79-14-502, above.

§ 79-14-503. Sharing of and right to distributions before dissolution.

(a) Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner, except to the extent necessary to comply with a transfer effective under Section 79-14-702 or charging order in effect under Section 79-14-703.

(b) A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in Section 79-14-810(f), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-503 [Laws, 1987, ch. 488, § 503, effective from

and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the sharing of profits and losses.

§ 79-14-504. Limitations on distributions.

(a) A limited partnership may not make a distribution, including a distribution under Section 79-14-810, if after the distribution:

(1) The partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

(2) The partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) A limited partnership may base a determination that a distribution is not prohibited under subsection (a) on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) In the case of a distribution as defined in Section 79-14-102(4)(A), as of the earlier of:

(A) The date money or other property is transferred or debt is incurred by the limited partnership; or

(B) The date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than one hundred twenty (120) days after that date; or

(B) The payment is made, if the payment occurs more than one hundred twenty (120) days after the distribution is authorized.

(d) A limited partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited partnership's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under Section 79-14-810, the liabilities of a dissolved limited partnership do not include any claim that has been disposed of under Section 79-14-806, 79-14-807, or 79-14-808.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-504 [Laws, 1987, ch. 488, § 504, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the sharing of distributions. For present similar provisions, see § 79-14-503.

§ 79-14-505. Liability for improper distributions.

(a) If a general partner consents to a distribution made in violation of Section 79-14-504 and in consenting to the distribution fails to comply with Section 79-14-409, the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 79-14-504.

(b) A person that receives a distribution knowing that the distribution violated Section 79-14-504 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 79-14-504.

(c) A general partner against which an action is commenced because the general partner is liable under subsection (a) may:

(1) Implead any other person that is liable under subsection (a) and seek to enforce a right of contribution from the person; and

(2) Implead any person that received a distribution in violation of subsection (b) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred unless commenced not later than two (2) years after the distribution.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 6.
DISSOCIATION.

Sec.

79-14-601. Dissociation as limited partner.
79-14-602. Effect of dissociation as limited partner.
79-14-603. Dissociation as general partner.
79-14-604. Power to dissociate as general partner; wrongful dissociation.
79-14-605. Effect of dissociation as general partner.
79-14-606. Power to bind and liability of person dissociated as general partner.
79-14-607. Liability of person dissociated as general partner to other persons.
79-14-608. Repealed.

§ 79-14-601. Dissociation as limited partner.

(a) A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(b) A person is dissociated as a limited partner when:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a limited partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

(2) An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

(3) The person is expelled as a limited partner pursuant to the partnership agreement;

(4) The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

(A) It is unlawful to carry on the limited partnership's activities and affairs with the person as a limited partner;

(B) There has been a transfer of all the person's transferable interest in the partnership, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under Section 79-14-703 which has not been foreclosed;

(C) The person is an entity and:

(i) The partnership notifies the person that it will be expelled as a limited partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) Not later than ninety (90) days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) The person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(5) On application by the limited partnership or a partner in a direct action under Section 79-14-901, the person is expelled as a limited partner by judicial order because the person:

(A) Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

(B) Has committed willfully or persistently, or is committing willfully and persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under Section 79-14-305(a); or

(C) Has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

(6) In the case of an individual, the individual dies;

(7) In the case of a person that is a testamentary or inter vivos trust or is acting as a limited partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is not an individual, the existence of the person terminates;

(10) The limited partnership participates in a merger under Article 11 and:

(A) The partnership is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a limited partner;

(11) The limited partnership participates in a conversion under the Mississippi Entity Conversion and Domestication Act;

(12) The limited partnership participates in a domestication under the Mississippi Entity Conversion and Domestication Act and, as a result of the domestication, the person ceases to be a limited partner; or

(13) The limited partnership dissolves and completes winding up.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-601 [Laws, 1987, ch. 488, § 601, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to interim distributions. For present provisions relating to distributions, see §§ 79-14-503 through 79-14-505.

Cross References — Mississippi Entity Conversion and Domestication Act, see § 79-37-101 et seq.

§ 79-14-602. Effect of dissociation as limited partner.

(a) If a person is dissociated as a limited partner:

(1) Subject to Section 79-14-704, the person does not have further rights as a limited partner;

(2) The person's contractual obligation of good faith and fair dealing as a limited partner under Section 79-14-305(a) ends with regard to matters arising and events occurring after the person's dissociation; and

(3) Subject to Section 79-14-704 and Article 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a limited partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a limited partner.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-602 [Laws, 1987, ch. 488, § 602; Laws, 1990, ch. 385, § 3, effective from and after passage (approved March 13, 1990); Repealed by Laws,

2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the withdrawal of a general partner. For present similar provisions, see § 79-14-603.

§ 79-14-603. Dissociation as general partner.

A person is dissociated as a general partner when:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a general partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

(2) An event stated in the partnership agreement as causing the person's dissociation as a general partner occurs;

(3) The person is expelled as a general partner pursuant to the partnership agreement;

(4) The person is expelled as a general partner by the affirmative vote or consent of all the other partners if:

(A) It is unlawful to carry on the limited partnership's activities and affairs with the person as a general partner;

(B) There has been a transfer of all the person's transferable interest in the partnership, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under Section 79-14-703 which has not been foreclosed;

(C) The person is an entity and:

(i) The partnership notifies the person that it will be expelled as a general partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) Not later than ninety (90) days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) The person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(5) On application by the limited partnership or a partner in a direct action under Section 79-14-901, the person is expelled as a general partner by judicial order because the person:

(A) Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

(B) Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under Section 79-14-409; or

(C) Has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to

carry on the activities and affairs of the limited partnership with the person as a general partner;

(6) In the case of an individual:

(A) The individual dies;

(B) A guardian or general conservator for the individual is appointed; or

(C) A court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this chapter or the partnership agreement;

(7) The person:

(A) Becomes a debtor in bankruptcy;

(B) Executes an assignment for the benefit of creditors; or

(C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

(8) In the case of a person that is a testamentary or inter vivos trust or is acting as a general partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(10) In the case of a person that is not an individual, the existence of the person terminates;

(11) The limited partnership participates in a merger under Article 11 and:

(A) The partnership is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a general partner;

(12) The limited partnership participates in a conversion under the Mississippi Entity Conversion and Domestication Act;

(13) The limited partnership participates in a domestication under the Mississippi Entity Conversion and Domestication Act and, as a result of the domestication, the person ceases to be a general partner; or

(14) The limited partnership dissolves and completes winding up.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-603 [Laws, 1987, ch. 488, § 603; Laws, 1998, ch. 376, § 12, effective from and after July 1, 1998; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the withdrawal of a limited partner. For present similar provisions, see § 79-14-601.

§ 79-14-604. Power to dissociate as general partner; wrongful dissociation.

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under Section 79-14-603(1).

(b) A person's dissociation as a general partner is wrongful only if the dissociation:

(1) Is in breach of an express provision of the partnership agreement; or

(2) Occurs before the completion of the winding up of the limited partnership, and:

(A) The person withdraws as a general partner by express will;

(B) The person is expelled as a general partner by judicial order under Section 79-14-603(5);

(C) The person is dissociated as a general partner under Section 79-14-603(7); or

(D) In the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 79-14-901, to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the general partner to the partnership or the other partners.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-604 [Laws, 1987, ch. 488, § 604; Laws, 1998, ch. 376, § 3, effective from and after July 1, 1998; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to distribution upon withdrawal. For present provisions relating to distributions, see §§ 79-14-503 through 79-14-505.

§ 79-14-605. Effect of dissociation as general partner.

(a) If a person is dissociated as a general partner:

(1) The person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates;

(2) The person's duties and obligations as a general partner under Section 79-14-409 end with regard to matters arising and events occurring after the person's dissociation;

(3) The person may sign and deliver to the Secretary of State for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated as a general partner; and

(4) Subject to Section 79-14-704 and Article 11, any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a general partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a general partner.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-605 [Laws, 1987, ch. 488, § 605, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to distributions in kind. For present similar provisions, see § 79-14-503.

§ 79-14-606. Power to bind and liability of person dissociated as general partner.

(a) After a person is dissociated as a general partner and before the limited partnership is merged out of existence under Article 11, converted or domesticated under the Mississippi Entity Conversion and Domestication Act, or dissolved, the partnership is bound by an act of the person only if:

(1) The act would have bound the partnership under Section 79-14-402 before the dissociation; and

(2) At the time the other party enters into the transaction:

(A) Less than two (2) years has passed since the dissociation; and

(B) The other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner which caused the partnership to be bound is liable:

(1) To the partnership for any damage caused to the partnership arising from the obligation incurred under subsection (a); and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-606 [Laws, 1987, ch. 488, § 606, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the right to receive a distribution. For present similar provisions, see § 79-14-503.

§ 79-14-607. Liability of person dissociated as general partner to other persons.

(a) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for a debt, obligation, or other liability of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person is not liable for a partnership obligation incurred after dissociation.

(b) A person whose dissociation as a general partner results in a dissolution and winding up of the limited partnership's activities and affairs is liable on an obligation incurred by the partnership under Section 79-14-805 to the same extent as a general partner under Section 79-14-404.

(c) A person that is dissociated as a general partner without the dissociation resulting in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the partnership after the dissociation only if:

(1) A general partner would be liable on the transaction; and

(2) At the time the other party enters into the transaction:

(A) Less than two (2) years has passed since the dissociation; and

(B) The other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the partnership, a person dissociated as a general partner may be released from liability for a debt, obligation, or other liability of the partnership.

(e) A person dissociated as a general partner is released from liability for a debt, obligation, or other liability of the limited partnership if the partnership's creditor, with knowledge or notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation, or other liability.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-607 [Laws, 1987, ch. 488, § 607, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to limitations on distributions. For present similar provisions, see § 79-14-504.

Cross References — If a claim against a dissolved limited partnership is barred under Section 79-14-806, 79-14-807, or 79-14-808, any corresponding claim under Section 79-14-404 or 79-14-607 is also barred, see § 79-14-809.

§ 79-14-608. Repealed.

Repealed by Laws of 2015, ch. 453, § 6, effective July 1, 2015.

Editor's Notes — Former § 79-14-608 [Laws, 1987, ch. 488, § 608, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to liability upon return of a partner's contribution.

ARTICLE 7.

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS.

Sec.
79-14-701. Nature of transferable interest.
79-14-702. Transfer of transferable interest.
79-14-703. Charging order.
79-14-704. Power to legal representative of deceased partner.
79-14-705 and 79-14-706. Repealed.

§ 79-14-701. Nature of transferable interest.

A transferable interest is personal property.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-701 [Laws, 1987, ch. 488, § 701; Laws, 2014, ch. 399, § 46, effective from and after January 1, 2015; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the nature of a partnership interest. Present similar provisions are found in current § 79-14-701, above.

§ 79-14-702. Transfer of transferable interest.

(a) A transfer, in whole or in part, of a transferable interest:

(1) Is permissible;

(2) Does not by itself cause a partner's dissociation or a dissolution and winding up of the limited partnership's activities and affairs; and

(3) Subject to Section 79-14-704, does not entitle the transferee to:

(A) Participate in the management or conduct of the partnership's activities and affairs; or

(B) Except as otherwise provided in subsection (c), have access to required information, records, or other information concerning the partnership's activities and affairs.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited partnership, a transferee is entitled to an account of the partnership's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by a limited partnership in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited partnership need not give effect to a transferee's rights under this section until the partnership knows or has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Except as otherwise provided in Sections 79-14-601(b)(4)(B) and 79-14-603(4)(B), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.

(h) If a general or limited partner transfers a transferable interest to a person that becomes a general or limited partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under Sections 79-14-502 and 79-14-505 known to the transferee when the transferee becomes a partner.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-702 [Laws, 1987, ch. 488, § 702, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after

July 1, 2015.] related to assignments of partnership interests. Present provisions relating to the transfer of a transferable interest are found in current § 79-14-702, above.

§ 79-14-703. Charging order.

(a) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) Make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and is subject to Section 79-14-702.

(d) At any time before foreclosure under subsection (c), the partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c), a limited partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(g) This section provides the exclusive remedy by which a person seeking, in the capacity of a judgment creditor, to enforce a judgment against a partner or transferee may satisfy the judgment from the judgment debtor's transferable interest.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-703 [Laws, 1987, ch. 488, § 703, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the rights of a creditor of a partner. For present provisions relating to actions by and against partnerships and partners, see § 79-14-405.

§ 79-14-704. Power to legal representative of deceased partner.

If a partner dies, the deceased partner's legal representative may exercise:

(1) The rights of a transferee provided in Section 79-14-702(c); and

(2) For the purposes of settling the estate, the rights of a current limited partner under Section 79-14-304.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-704 [Laws, 1987, ch. 488, § 704, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the right of an assignee to become a limited partner.

§§ 79-14-705 and 79-14-706. Repealed.

Repealed by Laws of 2015, ch. 453, § 6, effective July 1, 2015.

§ 79-14-705 [Laws, 1987, ch. 488, § 705, effective from and after January 1, 1988]

§ 79-14-706 [Laws, 2010, ch. 506, § 42, effective from and after July 1, 2010]

Editor's Notes — Former § 79-14-705 related to the power of the estate of a deceased or incompetent partner. For present similar provisions, see § 79-14-704.

Former § 79-14-706 related to the enforceability of limitations on assignments of limited partnership interests.

ARTICLE 8.

DISSOLUTION AND WINDING UP.

Sec.

79-14-801. Events causing dissolution.
79-14-802. Winding up.
79-14-803. Rescinding dissolution.
79-14-804. Power to bind partnership after dissolution.
79-14-805. Liability after dissolution of general partner and person dissociated as general partner.
79-14-806. Known claims against dissolved limited partnership.
79-14-807. Other claims against dissolved limited partnership.
79-14-808. Court proceedings.
79-14-809. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.
79-14-810. Disposition of assets in winding up; when contributions required.
79-14-811. Administrative dissolution.
79-14-812. Reinstatement.
79-14-813. Judicial review of denial of reinstatement.

§ 79-14-801. Events causing dissolution.

(a) A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) An event or circumstance that the partnership agreement states causes dissolution;

(2) The affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;

(3) After the dissociation of a person as a general partner:

(A) If the partnership has at least one (1) remaining general partner, the affirmative vote or consent to dissolve the partnership not later than ninety (90) days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

(B) If the partnership does not have a remaining general partner, the passage of ninety (90) days after the dissociation, unless before the end of the period:

(i) Consent to continue the activities and affairs of the partnership and admit at least one (1) general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) At least one (1) person is admitted as a general partner in accordance with the consent;

(4) The passage of ninety (90) consecutive days after the dissociation of the partnership's last limited partner, unless before the end of the period the partnership admits at least one (1) limited partner;

(5) The passage of ninety (90) consecutive days during which the partnership has only one (1) partner, unless before the end of the period:

(A) The partnership admits at least one (1) person as a partner;

(B) If the previously sole remaining partner is only a general partner, the partnership admits the person as a limited partner; and

(C) If the previously sole remaining partner is only a limited partner, the partnership admits a person as a general partner;

(6) On application by a partner, the entry by the chancery court for the county in which the office of the limited partnership is located of an order dissolving the partnership on the grounds that:

(A) The conduct of all or substantially all the partnership's activities and affairs is unlawful; or

(B) It is not reasonably practicable to carry on the partnership's activities and affairs in conformity with the certificate of limited partnership and partnership agreement; or

(7) The signing and filing of a statement of administrative dissolution by the Secretary of State under Section 79-14-811.

(b) If an event occurs that imposes a deadline on a limited partnership under subsection (a) and before the partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the partnership under subsection (a):

(1) The occurrence of the second event does not affect the deadline caused by the first event; and

(2) The partnership's meeting of the requirements of the first deadline does not extend the second deadline.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-801 [Laws, 1987, ch. 488, § 801, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to nonjudicial dissolution. Present similar provisions are found in current § 79-14-801, above.

§ 79-14-802. Winding up.

(a) A dissolved limited partnership shall wind up its activities and affairs and, except as otherwise provided in Section 79-14-803, the partnership continues after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs, the limited partnership:

(1) Shall discharge the partnership's debts, obligations, and other liabilities, settle and close the partnership's activities and affairs, and marshal and distribute the assets of the partnership;

(2) Shall file a statement of dissolution of the limited partnership with the Secretary of State; and

(3) May:

(A) Preserve the partnership activities, affairs, and property as a going concern for a reasonable time;

(B) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(C) Transfer the partnership's property;

(D) Settle disputes by mediation or arbitration; and

(E) Perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective. A person appointed under this subsection:

(1) Has the powers of a general partner under Section 79-14-804 but is not liable for the debts, obligations, and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved partnership's activities and affairs; and

(2) Shall deliver promptly to the Secretary of State for filing an amendment to the partnership's certificate of limited partnership stating:

(A) That the partnership does not have a general partner;

(B) The name and street and mailing addresses of the person; and

(C) That the person has been appointed pursuant to this subsection to wind up the partnership.

(d) On the application of a partner, the chancery court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:

(1) The partnership does not have a general partner and within a

reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or

(2) The applicant establishes other good cause.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-802 [Laws, 1987, ch. 488, § 802, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to judicial dissolution. For present similar provisions, see § 79-14-801.

Cross References — A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under §§ 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under § 79-14-812, see § 79-14-811.

§ 79-14-803. Rescinding dissolution.

(a) A limited partnership may rescind its dissolution, unless the chancery court has entered an order under Section 79-14-801(a) (6) dissolving the partnership or the Secretary of State has dissolved the partnership under Section 79-14-811.

(b) Rescinding dissolution under this section requires:

(1) The affirmative vote or consent of each partner; and

(2) If the limited partnership has delivered to the Secretary of State for filing an amendment to the certificate of limited partnership stating that the partnership is dissolved and:

(A) The amendment has not become effective, delivery to the Secretary of State for filing of a statement of withdrawal under Section 79-14-208 applicable to the amendment; or

(B) The amendment has become effective, delivery to the Secretary of State for filing of an amendment to the certificate of limited partnership within one hundred twenty (120) days of the effective date of the dissolution stating that dissolution has been rescinded under this section.

(c) If a limited partnership rescinds its dissolution:

(1) The partnership resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) Subject to paragraph (3), any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(3) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-803 [Laws, 1987, ch. 488, § 803, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the winding up of a limited partnership. For present similar provisions, see § 79-14-802.

§ 79-14-804. Power to bind partnership after dissolution.

(a) A limited partnership is bound by a general partner's act after dissolution which:

(1) Is appropriate for winding up the partnership's activities and affairs; or

(2) Would have bound the partnership under Section 79-14-402 before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) At the time the other party enters into the transaction:

(A) Less than two (2) years has passed since the dissociation; and

(B) The other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) The act:

(A) Is appropriate for winding up the partnership's activities and affairs; or

(B) Would have bound the partnership under Section 79-14-402 before dissolution and at the time the other party enters into the transaction the other party does not know or have notice of the dissolution.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-804 [Laws, 1987, ch. 488, § 804, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the distribution of a dissolved limited partnership's assets. For present similar provisions, see § 79-14-810.

§ 79-14-805. Liability after dissolution of general partner and person dissociated as general partner.

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Section 79-14-804(a) by an act that is not appropriate for winding up the partnership's activities and affairs, the general partner is liable:

(1) To the partnership for any damage caused to the partnership arising from the obligation; and

(2) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Section 79-14-804(b), the person is liable:

(1) To the partnership for any damage caused to the partnership arising from the obligation; and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for

any damage caused to the general partner or other person arising from the obligation.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-806. Known claims against dissolved limited partnership.

(a) Except as otherwise provided in subsection (d), a dissolved limited partnership may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) A dissolved limited partnership may in a record notify its known claimants of the dissolution. The notice must:

(1) Specify the information required to be included in a claim;

(2) State that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) State the deadline for receipt of a claim, which may not be less than one hundred twenty (120) days after the date the notice is received by the claimant;

(4) State that the claim will be barred if not received by the deadline; and

(5) Unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 79-14-404.

(c) A claim against a dissolved limited partnership is barred if the requirements of subsection (b) are met and:

(1) The claim is not received by the specified deadline; or

(2) If the claim is timely received but rejected by the partnership:

(A) The partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim not later than ninety (90) days after the claimant receives the notice; and

(B) The claimant does not commence the required action not later than ninety (90) days after the claimant receives the notice.

(d) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Cross References — If a claim against a dissolved limited partnership is barred under Section 79-14-806, 79-14-807, or 79-14-808, any corresponding claim under Section 79-14-404 or 79-14-607 is also barred, see § 79-14-809.

A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under §§ 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under § 79-14-812, see § 79-14-811.

§ 79-14-807. Other claims against dissolved limited partnership.

(a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited partnership's principal office is located or, if the principal office is not located in this state, in Hinds County, Mississippi;

(2) Describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;

(3) State that a claim against the partnership is barred unless an action to enforce the claim is commenced not later than three (3) years after publication of the notice; and

(4) Unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 79-14-404.

(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership not later than three (3) years after the publication date of the notice:

(1) A claimant that did not receive notice in a record under Section 79-14-806;

(2) A claimant whose claim was timely sent to the partnership but not acted on; and

(3) A claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) A claim not barred under this section or Section 79-14-806 may be enforced:

(1) Against the dissolved limited partnership, to the extent of its undistributed assets;

(2) Except as otherwise provided in Section 79-14-808, if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) Against any person liable on the claim under Sections 79-14-404 and 79-14-607.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Cross References — If a claim against a dissolved limited partnership is barred under Section 79-14-806, 79-14-807, or 79-14-808, any corresponding claim under Section 79-14-404 or 79-14-607 is also barred, see § 79-14-809.

A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under §§ 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under § 79-14-812, see § 79-14-811.

§ 79-14-808. Court proceedings.

(a) A dissolved limited partnership that has published a notice under Section 79-14-807 may file an application with the chancery court in the county where the limited partnership's principal office is located or, if the principal office is not located in this state, in the Chancery Court of the First Judicial District of Hinds County, Mississippi, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited partnership, or are based on an event occurring after the date of dissolution but which, based on the facts known to the limited partnership, are reasonably expected to arise after the date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Section 79-14-807.

(b) Not later than ten (10) days after the filing of an application under subsection (a), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

(c) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(d) A dissolved limited partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the dissolved limited partnership's obligations with respect to claims that are contingent, have not been made known to the partnership, or are based on an event occurring after the date of dissolution, and such claims may not be enforced against a partner or transferee on account of assets received in liquidation.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Cross References — If a claim against a dissolved limited partnership is barred under Section 79-14-806, 79-14-807, or 79-14-808, any corresponding claim under Section 79-14-404 or 79-14-607 is also barred, see § 79-14-809.

A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under §§ 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under § 79-14-812, see § 79-14-811.

§ 79-14-809. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.

If a claim against a dissolved limited partnership is barred under Section

79-14-806, 79-14-807, or 79-14-808, any corresponding claim under Section 79-14-404 or 79-14-607 is also barred.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-809 [Laws, 2012, ch. 382, § 90, effective from and after January 1, 2013; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided the grounds for an administrative dissolution. For present similar provisions, see § 79-14-811.

§ 79-14-810. Disposition of assets in winding up; when contributions required.

(a) In winding up its activities and affairs, a limited partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.

(b) After a limited partnership complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under Section 79-14-703:

(1) To each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) Among persons owning transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability limited partnership, the following rules apply:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 79-14-607 shall contribute to the partnership for the purpose of enabling the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(e) If a limited partnership does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(f) All distributions made under subsections (b) and (c) must be paid in money.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-810 [Laws, 2012, ch. 382, § 91, effective from and after January 1, 2013; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the procedure for an administrative dissolution. For present similar provisions, see § 79-14-811.

Cross References — A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under §§ 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under § 79-14-812, see § 79-14-811.

§ 79-14-811. Administrative dissolution.

(a) The Secretary of State may commence a proceeding under subsection (b) to dissolve a limited partnership administratively if the partnership does not:

(1) Pay any fee, tax, or penalty due to the Secretary of State under this chapter or other law within sixty (60) days after it is due; or

(2) Have a registered agent in this state for sixty (60) consecutive days.

(b) If the Secretary of State determines that one or more grounds exist for administratively dissolving a limited partnership, the Secretary of State shall serve the partnership with notice in a record of the Secretary of State's determination.

(c) If a limited partnership, not later than sixty (60) days after service of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the Secretary of State the nonexistence of each ground determined by the Secretary of State, the Secretary of State shall administratively dissolve the partnership by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The Secretary of State shall file the statement and serve a copy on the partnership pursuant to Section 79-35-13, except that the statement of administrative dissolution may be served by first-class mail.

(d) A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary

to wind up its activities and affairs and liquidate its assets under Sections 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under Section 79-14-812.

(e) The administrative dissolution of a limited partnership does not terminate the authority of its registered agent.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-811 [Laws, 2012, ch. 382, § 92, effective from and after January 1, 2013; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to reinstatement of a limited partnership after an administrative dissolution. For present similar provisions, see § 79-14-812.

§ 79-14-812. Reinstatement.

(a) A limited partnership that is administratively dissolved under Section 79-14-811 may apply to the Secretary of State for reinstatement not later than two (2) years after the effective date of dissolution. The application must state:

(1) The name of the partnership at the time of its administrative dissolution and, if needed, a different name that satisfies Section 79-14-114;

(2) The address of the principal office of the partnership and the name and street and mailing addresses of its registered agent;

(3) The effective date of the partnership's administrative dissolution; and

(4) That the grounds for dissolution did not exist or have been cured.

(b) To be reinstated, a limited partnership must pay all fees, taxes, interest, and penalties that were due to the Mississippi Department of Revenue at the time of the partnership's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the Mississippi Department of Revenue while the partnership was administratively dissolved.

(c) If the Secretary of State determines that an application under subsection (a) contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the Mississippi Department of Revenue by subsection (b) have been made, the Secretary of State shall:

(1) Cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the Secretary of State's determination and the effective date of reinstatement; and

(2) File the statement of reinstatement and serve a copy on the limited partnership.

(d) When reinstatement under this section is effective, the following rules apply:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(2) The limited partnership resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.

(3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-812 [Laws, 2012, ch. 382, § 93, effective from and after January 1, 2013; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided for an appeal from denial of reinstatement. For present similar provisions, see § 79-14-813.

Cross References — A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under §§ 79-14-802, 79-14-806, 79-14-807, 79-14-808, and 79-14-810, or to apply for reinstatement under § 79-14-812, see § 79-14-811.

§ 79-14-813. Judicial review of denial of reinstatement.

(a) If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the partnership with a notice in a record that explains the reason or reasons for the denial.

(b) A limited partnership may seek judicial review of denial of reinstatement in the Chancery Court of the First Judicial District of Hinds County, Mississippi, not later than thirty (30) days after service of the notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the limited partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 9.

ACTIONS BY PARTNERS.

Sec.
79-14-901. Direct action by partner.
79-14-902. Derivative action.
79-14-903. Proper plaintiff.
79-14-904. Pleading.
79-14-905. Special litigation committee.
79-14-906. Proceeds and expenses.
79-14-907 through 79-14-913. Repealed.

§ 79-14-901. Direct action by partner.

(a) Subject to subsection (b), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the partnership's activities and affairs, to enforce the partner's rights and otherwise protect the partner's interests, including rights

and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(b) A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) A right to an accounting on a dissolution and winding up does not revive a claim barred by law.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-901 [Laws, 1987, ch. 488, § 901, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the law governing foreign limited partnerships. For present similar provisions, see § 79-14-1001.

§ 79-14-902. Derivative action.

A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) The partner first makes a demand on the general partners, requesting that they cause the partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) A demand under paragraph (1) would be futile.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-902 [Laws, 1987, ch. 488, § 902; Laws, 1990, ch. 385, § 4; Laws, 1995, ch. 362, § 5; Laws, 1997, ch. 418, § 21; Laws, 2012, ch. 382, § 94, effective from and after January 1, 2013; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] required foreign limited partnerships to register with the Secretary of State before doing business in Mississippi. For present similar provisions, see § 79-14-1002.

§ 79-14-903. Proper plaintiff.

A derivative action to enforce a right of a limited partnership may be maintained only by a person that is a partner at the time the action is commenced and:

(1) Was a partner when the conduct giving rise to the action occurred; or

(2) Whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-903 [Laws, 1987, ch. 488, § 903; Laws, 1990, ch. 385, § 5; Laws, 1995, ch. 362, § 6; Laws, 1997, ch. 418, § 22, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the issuance of a foreign limited partnership registration. For present similar provisions, see § 79-14-210.

§ 79-14-904. Pleading.

In a derivative action, the complaint must state with particularity:

(1) The date and content of plaintiff's demand and the response to the demand by the general partner; or

(2) Why demand should be excused as futile.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-904 [Laws, 1987, ch. 488, § 904, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the name under which a foreign limited partnership could register. For present similar provisions, see § 79-14-114.

§ 79-14-905. Special litigation committee.

(a) If a limited partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the partnership. If the partnership appoints a special litigation committee, on motion by the committee made in the name of the partnership, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(1) Enforcing a person's right to information under Section 79-14-304 or 79-14-407; or

(2) Granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners.

(c) A special litigation committee may be appointed:

(1) By a majority of the general partners not named as parties in the proceeding; or

(2) If all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith,

independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to continue under the control of the plaintiff.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-905 [Laws, 1987, ch. 488, § 905; Laws, 1995, ch. 362, § 7; Laws, 1997, ch. 418, § 23, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to changes and amendments to the registration statement. For present similar provisions, see § 79-14-1004.

§ 79-14-906. Proceeds and expenses.

(a) Except as otherwise provided in subsection (b):

(1) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the plaintiff; and

(2) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the partnership.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited partnership.

(c) A derivative action on behalf of a limited partnership may not be voluntarily dismissed or settled without the court's approval.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-906 [Laws, 1987, ch. 488, § 906; Laws, 1995, ch. 362, § 8; Laws, 1997, ch. 418, § 24, effective from and after July 1, 1997; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the cancellation of a foreign limited partnership's registration.

§§ 79-14-907 through 79-14-913. Repealed.

Repealed by Laws of 2015, ch. 453, § 6, effective July 1, 2015.

§ 79-14-907. [Laws, 1987, ch. 488, § 907, effective from and after January 1, 1988].

§ 79-14-908. [Laws, 1987, ch. 488, § 908, effective from and after January 1, 1988]

§ 79-14-909. [Laws, 1995, ch. 362, § 9, effective from and after July 1, 1995]

§ 79-14-910. [Laws, 2012, ch. 382, § 95, effective from and after January 1, 2013]

§ 79-14-911. [Laws, 2012, ch. 382, § 96, effective from and after January 1, 2013]

§ 79-14-912. [Laws, 2012, ch. 382, § 97, effective from and after January 1, 2013]

§ 79-14-913. [Laws, 2012, ch. 382, § 98, effective from and after January 1, 2013]

Editor's Notes — Former § 79-14-907 related to the transaction of business without registration. For present similar provisions, see § 79-14-1002.

Former § 79-14-908 related to actions by the Attorney General. For present similar provisions, see § 79-14-1012.

Former § 79-14-909 provided that a document filed under former Chapter 14 that contained a copy of a signature was acceptable for filing.

Former § 79-14-910 provided the grounds for an administrative revocation of a foreign limited partnership's registration. For present similar provisions, see § 79-14-1010.

Former § 79-14-911 provided the procedure for the administrative revocation of a foreign limited partnership's registration. For present similar provisions, see § 79-14-1010.

Former § 79-14-912 related to the reinstatement of a revoked foreign limited partnership registration.

Former § 79-14-913 related to appeals from denials of reinstatement.

ARTICLE 10.

FOREIGN LIMITED PARTNERSHIPS.

Sec.

79-14-1001. Governing law.
79-14-1002. Registration to do business in this state.
79-14-1003. Foreign registration statement.
79-14-1004. Amendment of foreign registration statement.
79-14-1005. Activities not constituting doing business.
79-14-1006. Noncomplying name of foreign limited partnership.
79-14-1007. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.
79-14-1008. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.
79-14-1009. Transfer of registration.
79-14-1010. Termination of registration.
79-14-1011. Withdrawal of registration of registered foreign limited partnership.
79-14-1012. Action by Attorney General.

§ 79-14-1001. Governing law.

(a) The law of the jurisdiction of formation of a foreign limited partnership governs:

(1) The internal affairs of the partnership;

(2) The liability of a partner as partner for a debt, obligation, or other liability of the partnership; and

(3) The liability of a series of the partnership.

(b) A foreign limited partnership is not precluded from registering to do business in this state because of any difference between the law of its jurisdiction of formation and the law of this state.

(c) Registration of a foreign limited partnership to do business in this state does not authorize the foreign partnership to engage in any activities and affairs or exercise any power that a limited partnership may not engage in or exercise in this state.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1001 [Laws, 1987, ch. 488, § 1001, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the right of action of a limited partner against a general partner. For present similar provisions, see § 79-14-902.

§ 79-14-1002. Registration to do business in this state.

(a) A foreign limited partnership may not do business in this state until it registers with the Secretary of State under this article.

(b) A foreign limited partnership doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(c) The failure of a foreign limited partnership to register to do business in this state does not impair the validity of a contract or act of the partnership or preclude it from defending an action or proceeding in this state.

(d) A limitation on the liability of a general partner or limited partner of a foreign limited partnership is not waived solely because the partnership does business in this state without registering to do business in this state.

(e) Section 79-14-1001(a) and (b) applies even if the foreign limited partnership fails to register under this article.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1002 [Laws, 1987, ch. 488, § 1002, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the proper plaintiff in a derivative action. For present similar provisions, see § 79-14-903.

§ 79-14-1003. Foreign registration statement.

To register to do business in this state, a foreign limited partnership must deliver a foreign registration statement to the Secretary of State for filing. The statement must state:

(1) The name of the partnership and, if the name does not comply with Section 79-14-114, an alternate name adopted pursuant to Section 79-14-1006(a);

(2) That the partnership is a foreign limited partnership;

(3) The partnership's jurisdiction of formation;

(4) The street and mailing addresses of the partnership's principal office and, if the law of the partnership's jurisdiction of formation requires the partnership to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) The information required by Section 79-35-5(a).

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1003 [Laws, 1987, ch. 488, § 1003, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to derivative action pleadings. For present similar provisions, see § 79-14-904.

§ 79-14-1004. Amendment of foreign registration statement.

A registered foreign limited partnership shall deliver to the Secretary of State for filing an amendment to its foreign registration statement if there is a change in:

(1) The name of the partnership;

(2) The partnership's jurisdiction of formation;

(3) An address required by Section 79-14-1003(4); or

(4) The information required by Section 79-35-5(a).

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1004 [Laws, 1987, ch. 488, § 1004, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to awarding of reasonable expenses to plaintiffs in a successful derivative action. For present similar provisions, see § 79-14-906.

§ 79-14-1005. Activities not constituting doing business.

(a) Activities of a foreign limited partnership which do not constitute doing business in this state under this article include:

(1) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(2) Carrying on any activity concerning its internal affairs, including holding meetings of its partners;

(3) Maintaining accounts in financial institutions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities of the partnership or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, or security interests in property;

(8) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property;

(9) Conducting an isolated transaction that is not in the course of similar transactions;

(10) Owning, without more, property; and

(11) Doing business in interstate commerce.

(b) A person does not do business in this state solely by being a partner of a foreign limited partnership that does business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under law of this state other than this chapter.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1006. Noncomplying name of foreign limited partnership.

(a) A foreign limited partnership whose name does not comply with Section 79-14-114 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 79-14-114. A partnership that registers under an alternate name under this subsection need not comply with the Fictitious Business Name Registration Act. After registering to do business in this state with an alternate name, a partnership shall do business in this state under:

(1) The alternate name;

(2) The partnership's name, with the addition of its jurisdiction of formation; or

(3) A name the partnership is authorized to use under the Fictitious Business Name Registration Act.

(b) If a registered foreign limited partnership changes its name to one that does not comply with Section 79-14-114, it may not do business in this state until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with Section 79-14-114.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Cross References — Fictitious Business Name Registration Act, see § 75-93-1 et seq.

§ 79-14-1007. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited partnership that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the Secretary of State for filing is deemed to have withdrawn its registration on the effective date of the conversion.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1008. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(a) A registered foreign limited partnership that has dissolved and completed winding up or has converted to a domestic or foreign entity whose

formation does not require the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the Secretary of State for filing. In the case of a partnership that has completed winding up, the statement must state:

(1) Its name and jurisdiction of formation;

(2) That the partnership surrenders its registration to do business in this state.

(b) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to Section 79-35-13.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1009. Transfer of registration.

(a) When a registered foreign limited partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the Secretary of State to do business in this state, the foreign entity shall deliver to the Secretary of State for filing an application for transfer of registration. The application must state:

(1) The name of the registered foreign limited partnership before the merger;

(2) That before the merger the registration pertained to a foreign limited partnership;

(3) The name of the applicant foreign entity into which the foreign limited partnership has merged or to which it has been converted and, if the name does not comply with Section 79-14-114, an alternate name adopted pursuant to Section 79-14-1006(a);

(4) The type of entity of the applicant foreign entity and its jurisdiction of formation;

(5) The street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(6) The name and street and mailing addresses of the applicant foreign entity's registered agent in this state.

(b) When an application for transfer of registration takes effect, the registration of the foreign limited partnership to do business in this state is transferred without interruption to the foreign entity into which the partnership has merged or to which it has been converted.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1010. Termination of registration.

(a) The Secretary of State may terminate the registration of a registered

foreign limited partnership in the manner provided in subsections (b) and (c) if the partnership does not:

(1) Pay, not later than sixty (60) days after the due date, any fee, tax, interest, or penalty required to be paid to the Secretary of State under this chapter or law other than this chapter;

(2) Have a registered agent as required by the Mississippi Registered Agents Act; or

(3) Deliver to the Secretary of State for filing a statement of a change under Section 79-35-8 not later than thirty (30) days after a change has occurred in the name or address of the registered agent.

(b) The Secretary of State may terminate the registration of a registered foreign limited partnership by:

(1) Filing a notice of termination or noting the termination in the records of the Secretary of State; and

(2) Delivering a copy of the notice or the information in the notation to the partnership's registered agent or, if the partnership does not have a registered agent, to the partnership's principal office.

(c) The notice must state or the information in the notation must include:

(1) The effective date of the termination, which must be at least sixty (60) days after the date the Secretary of State delivers the copy; and

(2) The grounds for termination under subsection (a).

(d) The authority of the registered foreign limited partnership to do business in this state ceases on the effective date of the notice of termination or notation under subsection (b), unless before that date the partnership cures each ground for termination stated in the notice or notation. If the partnership cures each ground, the Secretary of State shall file a record so stating.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1011. Withdrawal of registration of registered foreign limited partnership.

(a) A registered foreign limited partnership may withdraw its registration by delivering a statement of withdrawal to the Secretary of State for filing. The statement of withdrawal must state:

(1) The name of the partnership and its jurisdiction of formation;

(2) That the partnership is not doing business in this state and that it withdraws its registration to do business in this state;

(3) That the partnership revokes the authority of its registered agent to accept service on its behalf in this state; and

(4) An address to which service of process may be made under subsection (b).

(b) After the withdrawal of the registration of a foreign limited partnership, service of process in any action or proceeding based on a cause of action arising during the time the partnership was registered to do business in this state may be made pursuant to Section 79-35-13.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1012. Action by Attorney General.

The Attorney General may maintain an action to enjoin a foreign limited partnership from doing business in this state in violation of this article.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 11.

MERGER.

Sec.

79-14-1101. Definitions.
79-14-1102. [Reserved].
79-14-1103. [Reserved].
79-14-1104. [Reserved].
79-14-1105. [Reserved].
79-14-1106. Merger.
79-14-1107. Action on plan of merger by constituent limited partnership.
79-14-1108. Filings required for merger; effective date.
79-14-1109. Effect of merger.
79-14-1110. Restrictions on approval of mergers and on relinquishing LLLP status.
79-14-1111. Liability of general partner after merger.
79-14-1112. Power of general partners and persons dissociated as general partners to bind organization after merger.
79-14-1113. Article not exclusive.

§ 79-14-1101. Definitions.

In this article:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "General partner" means a general partner of a limited partnership.

(4) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(5) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(6) "Organizational documents" means:

(A) For a domestic or foreign general partnership, its partnership agreement;

(B) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) For a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) For a business trust, its agreement of trust and declaration of trust;

(E) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(7) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(8) "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1101 [Laws, 1987, ch. 488, § 1101, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the construction and application of former Chapter 14. For present similar provisions, see § 79-14-1201.

§ 79-14-1102. [Reserved].

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1102 [Laws, 1987, ch. 488, § 1102, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided the short title for former Chapter 14. For present similar provisions, see § 79-14-101.

§ 79-14-1103. [Reserved].

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1103 [Laws, 1987, ch. 488, § 1103, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] was a severability clause. For present similar provisions, see § 79-14-1204.

§ 79-14-1104. [Reserved].

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1104 [Laws, 1987, ch. 488, § 1104; Laws, 2012, ch. 382, § 99; Laws, 2014, ch. 468, § 7, effective from and after July 1, 2014; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] was a list of fees the Secretary of State was authorized to charge and collect. For present similar provisions, see § 79-14-1301.

§ 79-14-1105. [Reserved].

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1105 [Laws, 1987, ch. 488, § 1105, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] repealed former Chapter 13, which governed limited partnerships, limited partnerships under prior laws and foreign limited partnerships.

§ 79-14-1106. Merger.

(a) A limited partnership may merge with one or more other constituent organizations pursuant to this section and Sections 79-14-1107 through 79-14-1109 and a plan of merger, if:

(1) The governing statute of each of the other organizations authorizes the merger;

(2) The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(3) Each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) The name and form of each constituent organization;

(2) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) If the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

(5) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1106 [Laws, 1987, ch. 488, § 1106; Laws, 1988, ch. 396, effective from and after passage (approved April 20, 1988); Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] related to the status of

partnerships formed prior to January 1, 1988, transitional rules and a savings clause. For present similar provisions, see §§ 79-14-112 and 79-14-1203.

§ 79-14-1107. Action on plan of merger by constituent limited partnership.

(a) Subject to Section 79-14-1110, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(b) Subject to Section 79-14-1110 and any contractual rights, after a merger is approved, and at any time before a filing is made under Section 79-14-1108, a constituent limited partnership may amend the plan or abandon the planned merger:

(1) As provided in the plan; and

(2) Except as prohibited by the plan, with the same consent as was required to approve the plan.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Editor's Notes — A former § 79-14-1107 [Laws, 1987, ch. 488, § 1107, effective from and after January 1, 1988; Repealed by Laws, 2015, ch. 453, § 6, effective from and after July 1, 2015.] provided that cases not provided for in former Chapter 14 were governed by the Mississippi Uniform Partnership Act (§ 79-13-101 et seq.).

§ 79-14-1108. Filings required for merger; effective date.

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(2) Each other preexisting constituent organization, by an authorized representative.

(b) The articles of merger must include:

(1) The name and form of each constituent organization and the jurisdiction of its governing statute;

(2) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) The date the merger is effective under the governing statute of the surviving organization;

(4) If the surviving organization is to be created by the merger:

(A) If it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(B) If it will be an organization other than a limited partnership, the organizational document that creates the organization;

(5) If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(6) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of Section 79-14-1109(b); and

(8) Any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited partnership shall deliver the articles of merger for filing in the Office of the Secretary of State.

(d) A merger becomes effective under this article:

(1) If the surviving organization is a limited partnership, upon the later of:

(A) Compliance with subsection (c); or

(B) Subject to Section 79-14-206(c), as specified in the articles of merger; or

(2) If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1109. Effect of merger.

(a) When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of Article 8;

(9) If the surviving organization is created by the merger:

(A) If it is a limited partnership, the certificate of limited partnership becomes effective; or

(B) If it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(10) If the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in the Mississippi Registered Agents Act.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

Cross References — Mississippi Registered Agents Act, see § 79-35-1 et seq.

§ 79-14-1110. Restrictions on approval of mergers and on relinquishing LLLP status.

(a) If a partner of a constituent limited partnership will have personal liability with respect to a surviving organization, approval and amendment of a plan of merger are ineffective without the consent of the partner, unless:

(1) The limited partnership's partnership agreement provides for the approval of the merger with the consent of fewer than all the partners; and

(2) The partner has consented to the provision of the partnership agreement.

(b) An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(1) The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(2) Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(c) A partner does not give the consent required by subsection (a) or (b) merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1111. Liability of general partner after merger.

(a) A merger under this article does not discharge any liability under Sections 79-14-404 and 79-14-607 of a person that was a general partner in or dissociated as a general partner from a constituent limited partnership, but:

(1) The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(2) For the purposes of applying those provisions, the converted or surviving organization is deemed to be the constituent limited partnership; and

(3) If a person is required to pay any amount under this subsection:

(A) The person has a right of contribution from each other person that was liable as a general partner under Section 79-14-404 when the obligation was incurred and has not been released from the obligation under Section 79-14-607; and

(B) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) In addition to any other liability provided by law:

(1) A person that immediately before a merger became effective was a general partner in a constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(A) Does not have notice of the merger; and

(B) Reasonably believes that:

(i) The surviving business is the constituent limited partnership;

(ii) The constituent limited partnership is not a limited liability limited partnership; and

(iii) The person is a general partner in the constituent limited partnership; and

(2) A person that was dissociated as a general partner from a constituent limited partnership before the merger became effective is personally liable for each obligation of the surviving organization arising from a transaction with a third party after the merger becomes effective, if:

(A) Immediately before the merger became effective, the converted surviving limited partnership was not a limited liability limited partnership; and

(B) At the time the third party enters into the transaction, less than two (2) years have passed since the person dissociated as a general partner and the third party:

(i) Does not have notice of the dissociation;

(ii) Does not have notice of the merger; and

(iii) Reasonably believes that the surviving organization is the constituent limited partnership, the constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the constituent limited partnership.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1112. Power of general partners and persons dissociated as general partners to bind organization after merger.

(a) An act of a person that immediately before a merger became effective was a general partner in a constituent limited partnership binds the surviving organization after the merger becomes effective, if:

(1) Before the merger became effective, the act would have bound the constituent limited partnership under Section 79-14-402; and

(2) At the time the third party enters into the transaction, the third party:

(A) Does not have notice of the merger; and

(B) Reasonably believes that the surviving business is the constituent limited partnership and that the person is a general partner in the constituent limited partnership.

(b) An act of a person that before a merger became effective was dissociated as a general partner from a constituent limited partnership binds the converted or surviving organization after the merger becomes effective, if:

(1) Before the merger became effective, the act would have bound the constituent limited partnership under Section 79-14-402 if the person had been a general partner; and

(2) At the time the third party enters into the transaction, less than two (2) years have passed since the person dissociated as a general partner and the third party:

(A) Does not have notice of the dissociation;

(B) Does not have notice of the merger; and

(C) Reasonably believes that the surviving organization is the constituent limited partnership and that the person is a general partner in the constituent limited partnership.

(c) If a person having knowledge of the merger causes a surviving organization to incur an obligation under subsection (a) or (b), the person is liable:

(1) To the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(2) If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1113. Article not exclusive.

This article does not preclude an entity from being converted or merged under other law.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 12.

MISCELLANEOUS PROVISIONS.

Sec.
79-14-1201. Uniformity of application and construction.
79-14-1202. Relation to electronic signatures in Global and National Commerce Act.
79-14-1203. Savings clause.
79-14-1204. Severability clause.

§ 79-14-1201. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1202. Relation to electronic signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1203. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before July 1, 2015.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

§ 79-14-1204. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

ARTICLE 13.

FEES.

Sec.
79-14-1301. Fees.

§ 79-14-1301. Fees.

Pursuant to this chapter, the Secretary of State shall charge and collect a fee for:

(1) Reservation, Cancellation or Transfer of Partnership Name $25.00

(2) Filing of Certificate of Limited Partnership 50.00

(3) Filing of Amendment to Certificate of Limited Partnership 50.00

(4) Filing of Statement of Dissolution 25.00

(5) [Reserved]

(6) Filing of Restated Certificate of Limited Partnership or Amended and Restated Certificate of Limited Partnership 25.00

(7) Filing of Statement of Withdrawal 25.00

(8) Filing of Application for Registration of Foreign Limited Partnership 250.00

(9) Filing of Certificate Correcting Application or Registration of Foreign Limited Partnership 50.00

(10) Filing of withdrawal of Registration of Foreign Limited Partnership 25.00

(11) Certificate of Administrative Dissolution ..... No fee

(12) Filing of Application for Reinstatement Following Administrative Dissolution 50.00

(13) Certificate of Revocation of Registration to Transact Business ..... No fee

(14) Filing of Application for Reinstatement Following Administrative Revocation 100.00

(15) Any other document required or permitted to be filed by Section 79-14-101 et seq 25.00

HISTORY: Laws, 2015, ch. 453, § 1, eff from and after July 1, 2015.

CHAPTER 19.

AGRICULTURAL COOPERATIVE MARKETING ASSOCIATIONS

Sec.
79-19-9. Powers.
79-19-13. Articles of association.
79-19-15. Amendments to articles of association.
79-19-23. Election of officers.
79-19-25. Stock, membership certificates, when issued; voting; liability; limitations on transfer and ownership.
79-19-55. Filing fees.
79-19-65. Applicability of general nonprofit corporation laws to associations organized under this chapter.

§ 79-19-9. Powers.

Each association incorporated hereunder shall have the following powers:

(a) To engage in any activity in connection with the growing, breeding, marketing, selling, or buying, or utilization of live stock and poultry of every description and the byproducts thereof, or with the marketing, selling, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any agricultural product produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. The association may also buy, sell and deal in agricultural products of nonmembers to an amount not greater in value than such as are handled by it for its members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity, or in the warehousing or handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws.

(f) To buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) To do each and every thing necessary, suitable, or proper for the accomplishment of any one (1) of the purposes, or the attainment of any one or more of the objects herein enumerated, or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized, or to the activities in which it is engaged; and to do any such thing anywhere.

(h) To sue and be sued, and prosecute and be prosecuted to judgment and suit before any court; to contract and be contracted with.

HISTORY: Codes, 1930, § 4103; 1942, § 4498; Laws, 1922, ch. 179; Laws, 1930, ch. 10; Laws, 2014, ch. 507, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted the present last sentence in (a) for the former last sentence, which read: "No association shall handle the agricultural products of any nonmember, except as necessary and incidental to the handling of the products of members, and in any such case the value of products of nonmembers so handled shall not exceed the value of the products handled by the association for its members"; and inserted "(1)" following "accomplishment of any one" in (g).

§ 79-19-13. Articles of association.

Each association formed under this chapter must prepare and file articles of association, setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, if other than perpetual.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which property right and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This paragraph of the articles of association shall not be altered, amended, or repealed except by the written consent of the vote of three-fourths (¾) of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided the articles of association must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and certify acknowledgments, and shall be filed and recorded in the Office of the Secretary of State.

HISTORY: Codes, 1930, § 4105; 1942, § 4500; Laws, 1922, ch. 179; Laws, 1962, ch. 227; Laws, 2014, ch. 507, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "if other than perpetual" for "not exceeding ninety-nine (99) years" in (d) and inserted "(1)" following "acknowledged by one" in the undesignated paragraph in (g).

§ 79-19-15. Amendments to articles of association.

(1) Any amendment to the articles of association must first be approved by a vote of not less than two-thirds (⅔) of all the members of the board of directors and then adopted by a vote representing a majority of all the members of the association.

(2) However, if a majority of the members are not present at a meeting of the members of the association to a proposed amendment that has been

submitted, then those present shall recess the meeting to a time and place certain, but not sooner than three (3) weeks from the time of recess. Prior to the reconvening of the recessed meeting, notices shall be published each week for three (3) consecutive weeks in a newspaper of general circulation in the place where the principal office of the association is located. These notices shall state the time, place, and purpose of the recessed meeting. When the meeting reconvenes, the members present shall constitute a quorum, and may take action on the proposed amendment by a majority vote of those present, even if members present are fewer than a majority of the total membership of the association.

(3) Amendments to the articles of association when so adopted shall be certified to by the president and secretary of the association and shall be filed with the Secretary of State. Such certification and filing shall be conclusive evidence of the validity of such amendment.

HISTORY: Codes, 1930, § 4106; 1942, § 4501; Laws, 1922, ch. 179; Laws, 1964, ch. 261; Laws, 2014, ch. 507, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (2) and redesignated the former undesignated paragraph as present (1) and (3); in (1) deleted the second sentence regarding the submission of proposed amendment to the members for a vote and inserted "and then adopted . . . of the association" at the end.

§ 79-19-23. Election of officers.

The directors shall elect from their number a chairman or board president. The directors also shall elect a chief operating officer of the association, one or more vice presidents, a secretary and treasurer, none of whom need be directors or members of the association. The board may combine the two (2) latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

HISTORY: Codes, 1930, § 4110; 1942, § 4505; Laws, 1922, ch. 179; Laws, 2014, ch. 507, § 4, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "chairman or board" following "from their number a", "The directors also shall elect a chief operating officer of the association" preceding "one or more vice presidents", and "The board" preceding "may combine the two (2)"; deleted "and" preceding "one or more vice presidents", "They shall also elect" preceding "a secretary and treasurer", "not" preceding "be directors or members", and "and they" preceding "may combine the two (2)"; and substituted "none of whom" for "who" in the former first and second sentences.

§ 79-19-25. Stock, membership certificates, when issued; voting; liability; limitations on transfer and ownership.

When a member of an association established without capital stock has

paid his membership fee, if required, in full he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee.

No stockholder of a cooperative association shall own more than one-twentieth ($^1/_{20}$) of the common stock of the association or more than one-twentieth ($^1/_{20}$) of the preferred stock of the association enjoying voting rights, but any one (1) stockholder may own one-twentieth ($^1/_{20}$) of each class; and an association, in its bylaws, may limit the amount of common stock or of preferred stock enjoying voting rights which one (1) member may own to any amount less than one-twentieth ($^1/_{20}$) of such stock.

Each share of stock shall entitle the holder thereof to one (1) vote in the management of the association; provided, however, if authorized by the articles of association, classes of preferred stock may be issued without voting rights.

Preferred stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of association and printed on the face of the certificate.

The bylaws shall prohibit the transfer of the common stock or of preferred stock enjoying voting rights to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter.

HISTORY: Codes, 1930, § 4111; 1942, § 4506; Laws, 1922, ch. 179; Laws, 1964, ch. 263; Laws, 2014, ch. 507, § 5, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "if required" following "has paid his membership fee" in the first undesignated paragraph and made minor punctuation changes.

§ 79-19-55. Filing fees.

For filing articles of association and amendments to the articles, an association organized under this chapter shall pay to the Secretary of State Fifty Dollars ($50.00).

HISTORY: Codes, 1930, § 4126; 1942, § 4521; Laws, 1922, ch. 179; Laws, 1958, ch. 346, § 2, eff July 1, 1958; Laws, 2014, ch. 507, § 6, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "and amendments to the articles" following "For filing articles of association", substituted "under this chapter" for "hereunder Twenty Dollars ($20.00); and for filing an amendment to the articles, Ten Dollars ($10.00)", and added "Fifty Dollars ($50.00)" to the end of the sentence.

§ 79-19-65. Applicability of general nonprofit corporation laws to associations organized under this chapter.

The general nonprofit corporation laws and all powers and rights under those laws apply to the associations organized under this chapter, except where such provisions are in conflict or inconsistent with the express provisions of this chapter.

HISTORY: Laws, 2014, ch. 507, § 7, eff from and after July 1, 2014.

CHAPTER 29.

REVISED MISSISSIPPI LIMITED LIABILITY COMPANY ACT

Article 1.	General Provisions.	79-29-101
Article 2.	Formation, Certificate of Formation.	79-29-201
Article 10.	Foreign Limited Liability Companies.	79-29-1001
Article 12.	Miscellaneous.	79-29-1201

ARTICLE 1.

GENERAL PROVISIONS.

Sec.

79-29-111. Reservation of name.

79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.

§ 79-29-111. Reservation of name.

(1) The right to the use of a legal name under Section 79-29-109 may be reserved by:

(a) A person intending to organize a limited liability company under this chapter and to adopt that name;

(b) A domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) A foreign limited liability company intending to register in this state and adopt that name; and

(d) A person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by delivering to the Office of the Secretary of State for filing an application, signed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use as a legal name by a domestic or foreign limited liability company, the Secretary of State shall reserve the name for the exclusive use of the applicant as a legal name for a

period of one hundred eighty (180) days. The one-hundred-eighty-day period may be renewed once by the applicant by filing a renewal application within thirty (30) days before the expiration of the initial one-hundred-eighty-day period. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the Office of the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) The reservation of a specified name may be cancelled by delivering to the Office of the Secretary of State a notice of cancellation, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

(4) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(5) A fee as set forth in Section 79-29-1203 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

HISTORY: Laws, 2010, ch. 532, § 1; Laws, 2014, ch. 468, § 4, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (2), deleted the former third sentence and added the present third sentence; and in (4), inserted "of State" following "fees required by law the Secretary of."

§ 79-29-117. Nature of business; powers.

JUDICIAL DECISIONS

1. Authority.

Because an LLC lacked the authority to agree to dispose of its only asset via a deed in lieu of foreclosure, the appellate court agreed with the chancellor's holding that no settlement agreement was reached by the parties. The appellate court found no evidence to indicate that the LLC's members timely complied with the Revised Mississippi Limited Liability Company Act's requirements necessary to authorize the LLC to dispose of its sole asset via a deed in lieu of foreclosure. Coast Plaza LLC v. RCH Capital LLC, 281 So. 3d 1125, 2019 Miss. App. LEXIS 266 (Miss. Ct. App. 2019).

§ 79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.

(1) An operating agreement must initially be agreed to by all of the members. Except as otherwise provided in subsections (2) and (3) of this section, the certificate of formation or operating agreement governs:

(a) The affairs of a limited liability company, the conduct of its business

and the relations of its members among the members as members and between the members and the limited liability company;

(b) The rights, powers and duties under this chapter of a person in the capacity of member, manager, officer or other person who is a party to or is otherwise bound by the operating agreement;

(c) The activities of the limited liability company and the conduct of those activities; and

(d) The means and conditions for amending the operating agreement.

(2) To the extent that: (a) the provisions of the operating agreement are not inconsistent with the certificate of formation, the operating agreement governs the matters described in paragraphs (a) through (d) of subsection (1) of this section; (b) the certificate of formation or operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement, except an amendment that occurs as the result of a merger with a domestic or foreign limited liability company must be approved by a majority of the members; and (c) the certificate of formation or operating agreement does not otherwise provide for a matter described in paragraphs (a) through (d) of subsection (1) of this section, this chapter governs the matter.

(3) Except as provided in this subsection (3), the provisions of this chapter that relate to the matters described in paragraphs (a) through (d) of subsection (1) of this section may be waived, restricted, limited, eliminated or varied by the certificate of formation or operating agreement. In addition to the restrictions set forth in subsections (4) and (5) of this section, the certificate of formation or the operating agreement may not:

(a) Vary the requirement set forth in subsection (1) of this section that the initial operating agreement must be agreed to by all of the members;

(b) Vary a limited liability company's capacity to sue and be sued in its own name;

(c) Vary the law applicable under Section 79-29-119;

(d) Vary the power of the court under Section 79-29-209;

(e) Restrict the right to approve a merger under Section 79-29-223(e) to a member who will have personal liability with respect to a survivor;

(f) Restrict the right to approve a conversion under the Mississippi Entity Conversion and Domestication Act of a member that will have personal liability with respect to an entity following the conversion.

(g) Restrict the right to approve an asset sale agreement under Section 79-29-233(e) to a member who will have personal liability with respect to any entity;

(h) Eliminate the implied contractual covenant of good faith and fair dealing of a member, manager, officer or other person who is a party to the operating agreement or who is otherwise bound by the operating agreement;

(i) Unreasonably restrict the duties and rights stated in Section 79-29-315;

(j) Waive the requirement of Section 79-29-503(1) that a contribution obligation be in writing;

(k) Vary the requirement to windup a limited liability company's business following the filing of a certificate of dissolution as specified in Section 79-29-801;

(*l*) Vary the manner of the distribution of assets in connection with the winding-up of a limited liability company's business as required by Section 79-29-813(1)(a);

(m) Vary the power of a court to decree dissolution in the circumstances specified in Section 79-29-803(1) or to appoint trustees or receivers as specified in Section 79-29-815;

(n) Vary the requirements of Sections 79-29-817 and 79-29-819;

(o) Vary or modify any provision of Article 9 of this chapter unless otherwise expressly provided in Article 9 that the certificate of formation or the operating agreement may vary or modify such provision;

(p) Unreasonably restrict the right of a member to maintain an action under Article 11 of this chapter;

(q) Vary any requirement set forth in this chapter that an agreement must be contained in either the certificate of formation or a written operating agreement to be enforceable; or

(r) Vary any provision set forth in this chapter relating to filing, fees or any action with or by the Secretary of State's office.

(4) The certificate of formation or an operating agreement may provide for the limitation or elimination of any and all liabilities of any manager, member, officer or other person who is a party to or is otherwise bound by the operating agreement for any action taken, or failure to take any action, as a manager or member or other person, including, for breach of contract and for breach of duties, including all or any fiduciary duties, of a member, manager, officer or other person to a limited liability company or to its members or to another member or manager or officer or to another person; provided, that the certificate of formation or an operating agreement may not limit or eliminate liability for:

(a) The amount of a financial benefit by a member or manager to which the member or manager is not entitled;

(b) An intentional infliction of harm on the limited liability company or the members;

(c) An intentional violation of criminal law;

(d) A violation of Section 79-29-611;

(e) The amount of a distribution in violation of Section 79-29-813(1); or

(f) Any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(5) **Indemnification.**

(a) A limited liability company may, and shall have the power to, indemnify and hold harmless any member, manager, officer or other person from and against any and all claims and demands whatsoever, except a limited liability company and an operating agreement shall not indemnify any member, manager, officer or other person from and against any claims or demands in connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was:

(i) Found to have engaged in acts or omissions that constitute fraudulent conduct and was adjudged liable for claims based on such conduct; or

(ii) Was found to have engaged in any actions described in subsection (4) of this section and was adjudged liable for claims based on such actions.

(b) A limited liability company shall indemnify a member, manager, officer or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member, manager, officer or agent of the limited liability company against reasonable expenses incurred by the member, manager, officer or agent in connection with the proceeding.

(c) Each such indemnity may continue as to a person who has ceased to have the capacity referred to in subsection (5)(a) of this section and may inure to the benefit of the heirs, beneficiaries and personal representatives of such person.

(6) General standards of conduct. Subject to the certificate of formation or the terms of a written operating agreement or other written agreement, which may expand, eliminate or restrict the following, except as provided in subsection (4)(f) of this section,

(a) A manager:

(i) Shall discharge the duties of a manager;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the manager reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a manager, or any failure to take any action, if such manager performed the duties of such manager in compliance with subsection (6)(a)(i) of this section.

2. For breach of fiduciary duty for the manager's good-faith reliance on the provisions of the operating agreement.

(b) An officer:

(i) Shall discharge the duties of an officer;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the officer reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as an officer, or any failure to take any action, if such officer performed the duties of such member in compliance with subsection (6)(b)(i) of this section; and

2. For breach of fiduciary duty for the officer's good-faith reliance on the provisions of the operating agreement.

(c) A member of a member-managed limited liability company:

(i) Shall discharge the duties of a member of a member-managed limited liability company;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the person reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a member of a member-managed limited liability company, or any failure to take any action, if such member performed the duties of such member in compliance with subsection (6)(c)(i) of this section.

2. For breach of fiduciary duty for the member's good faith reliance on the provisions of the operating agreement.

(d) To the extent that, at law or in equity, a member of a manager-managed limited liability company or other person has duties, including fiduciary duties set forth in this chapter, to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement, such member's or other person's fiduciary duties may be expanded, restricted or eliminated by provisions in the certificate of formation or the written operating agreement.

(e) The operating agreement may:

(i) Identify specific categories of activities that do not violate the duty of loyalty;

(ii) Alter or eliminate any other fiduciary duty, including eliminating particular aspects of that duty; and

(iii) If not manifestly unreasonable, prescribe the standards by which to measure the performance of the implied contractual covenant of good faith and fair dealing under Section 79-29-123(3)(g).

(7) Any agreement relating to or governing any event, act, omission, duty, right, power or liability under or pursuant to the following sections of this chapter must be expressly contained in either the certificate of formation or a written operating agreement in order to be enforceable:

(a) Section 79-29-123(4);

(b) Section 79-29-123(6);

(c) Section 79-29-231;

(d) Section 79-29-301(6);

(e) Section 79-29-303;

(f) Section 79-29-309;

(g) Section 79-29-313(1);

(h) Section 79-29-801; and

(i) Section 79-29-1211.

(8) A court of equity:

(a) May enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances or, when the provisions of Section 79-29-803 are applicable, the court may order dissolution of the limited liability company; and

(b) Shall decide any claim under subsection (6)(e)(iii) of this section that such standard is manifestly unreasonable.

The court:

(i) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(ii) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

1. The objective of the term is unreasonable; or

2. The term is an unreasonable means to achieve the provision's objective.

HISTORY: Laws, 2010, ch. 532, § 1; Laws, 2014, ch. 399, § 47, eff from and after Jan. 1, 2015.

Amendment Notes — The 2014 amendment, effective January 1, 2015, added (3)(f) and redesignated remaining subsections accordingly; inserted hyphen in between the words "good faith" in (6)(a)(ii)2. and (6)(b)(ii)2.

ARTICLE 2.

FORMATION, CERTIFICATE OF FORMATION.

Sec.
79-29-231. Appraisal rights.

§ 79-29-231. Appraisal rights.

(1) The certificate of formation or written operating agreement may eliminate, expand or restrict the appraisal rights granted in this section and may vary, modify, eliminate or expand any of the provisions of this section.

(2) **Definitions.** In this section:

(a) "Entitled persons" means all owners of financial interests. Financial interests may be owned by members and may also be owned by persons who are not members of the limited liability company. Members of the limited liability company who have no financial interests in the limited liability company are not entitled to appraisal rights pursuant to this section.

(b) "Fair value" means the value of the financial interests of the limited liability company determined:

(i) Immediately before the effectuation of the action to which the entitled person objects;

(ii) Using customary and current valuation concepts and techniques

generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status.

(3) **Right to appraisal.**

(a) Unless otherwise provided in the certificate of formation or written operating agreement or other written agreement each entitled person is entitled to appraisal rights, and to obtain payment of the fair value of the entitled person's financial interest in the event of any of the following actions:

(i) Consummation of a merger to which the limited liability company is a party;

(ii) Consummation of a sale, lease, exchange, or other disposition of assets if the disposition would leave the limited liability company without a significant continuing business activity. If a limited liability company retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations or revenues from continuing operations for that fiscal year, in each case of the limited liability company and its subsidiaries on a consolidated basis, the limited liability company will conclusively be deemed to have retained a significant continuing business activity;

(iii) Any other action to the extent provided by the certificate of formation or written operating agreement.

(b) An entitled person may not challenge a completed action for which appraisal rights are available unless such action:

(i) Was not effectuated in accordance with the applicable provisions of this chapter or the limited liability company's certificate of formation or operating agreement; or

(ii) Was procured as a result of fraud or material misrepresentation.

(4) **Notice of appraisal rights.** If a proposed action described in subsection (3) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that entitled persons are entitled to assert appraisal rights under this section and a copy of this section or a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable, must accompany the meeting notice sent to the entitled persons.

(5) **Notice of intent to demand payment.**

(a) If a proposed action requiring appraisal rights under subsection (3)(a) of this section is submitted to a vote, entitled persons who wish to assert appraisal rights with respect to any class or series of financial interests:

(i) Must deliver to the limited liability company before the vote is taken written notice of the person's intent to demand payment if the proposed action is effectuated; and

(ii) Must not vote, or cause or permit to be voted, any of the person's financial interests in favor of the proposed action.

(b) An entitled person who does not satisfy the requirements of subsection (5)(a) of this section is not entitled to payment under this section.

(6) **Appraisal notice and form.**

(a) If a proposed action requiring appraisal rights under subsection (3) of this section becomes effective, the limited liability company must deliver a written appraisal notice and form required by this subsection (6) to all entitled persons who satisfied the requirements of subsection (5) of this section.

(b) The appraisal notice must be sent no earlier than the date the action became effective and no later than ten (10) days after such date and must:

(i) Supply a form that specifies the date of the first announcement to entitled persons of the principal terms of the proposed action and requires the person asserting appraisal rights to certify: 1. whether the entitled person acquired ownership of the interests for which appraisal rights are asserted before that date; and 2. that the person did not vote for the transaction;

(ii) State:

1. Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (6)(b)(ii)2 of this section;

2. A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (6)(a) appraisal notice and form are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

3. The limited liability company's estimate of the fair value of the financial interests;

4. That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (6)(b)(ii)2 of this section, the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

5. The date by which the notice to withdraw under subsection (7) must be received, which date must be within twenty (20) days after the date specified in subsection (6)(b)(ii)2 of this section; and

(c) Be accompanied by a copy of this section or by a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable.

(7) **Perfection of rights; right to withdraw.**

(a) An entitled person who receives notice pursuant to subsection (6) of this section and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the entitled person acquired ownership of the person's financial interests before the date required to be set forth in the notice pursuant to subsection (6)(b) of this

section. If an entitled person fails to make this certification, the limited liability company may elect to treat the entitled person's financial interests as after-acquired interests under subsection (9) of this section. In addition, an entitled person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the entitled person's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subsection (6)(b)(ii)2 of this section. Once an entitled person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that entitled person loses all rights as a member or owner of a financial interest, unless the entitled person withdraws pursuant to subsection (7)(b) of this section.

(b) An entitled person who has complied with subsection (7)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (6)(b)(ii)5 of this section. An entitled person who fails to so withdraw from the appraisal process may not thereafter withdraw from the appraisal process without the limited liability company's written consent.

(c) An entitled person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (6)(b)(ii)2 of this section, shall not be entitled to payment under this subsection.

(8) **Payment.**

(a) Except as provided in subsection (7) of this section, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, the limited liability company shall pay in cash to those entitled persons who complied with subsection (7)(a) of this section the amount the limited liability company estimates to be the fair value of their financial interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (8)(a) of this section must be accompanied by:

(i) Financial statements of the limited liability company that issued the financial interests to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in equity for that year, and the latest available interim financial statements, if any;

(ii) A statement of the limited liability company's estimate of the fair value of the financial interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (6)(b)(ii)3 of this section;

(iii) A statement that persons described in this subsection (8) have the right to demand further payment under subsection (10) of this section and that if any such person does not do so within the time period specified therein, the person shall be deemed to have accepted the payment in full

satisfaction of the limited liability company's obligations under this section.

(9) **After-acquired interests.**

(a) A limited liability company may elect to withhold payment required by subsection (8) of this section from any entitled person who did not certify that ownership of all of the entitled person's financial interests for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subsection (6)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (9)(a) of this section, it must, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, notify all entitled persons who are described in subsection (9)(a) of this section:

(i) Of the information required by subsection (8)(b)(i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (8)(b)(ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands, or demand appraisal under subsection (10) of this section;

(iv) That those entitled persons who wish to accept the offer must so notify the limited liability company of the person's acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those entitled persons who do not satisfy the requirements for demanding appraisal under subsection (10) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the entitled person's acceptance pursuant to subsection (9)(b) of this section, the limited liability company must pay in cash the amount it offered under subsection (9)(b)(ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (9)(b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (8)(b) of this section to each entitled person described in subsection (9)(b)(ii) of this section.

(10) **Procedure if entitled person dissatisfied with payment or offer.**

(a) An entitled person paid pursuant to subsection (8) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that person's estimate of the fair value of the financial interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (8) of this section. An entitled person offered payment under subsection (9) of this section who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the financial interests plus interest at the legal rate.

(b) An entitled person who fails to notify the limited liability company in writing of that entitled person's demand to be paid the entitled person's

stated estimate of the fair value plus interest at the legal rate under subsection (10)(a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsection (8) or (9) of this section, respectively, waives the right to demand payment under this subsection (10) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(11) **Court action.**

(a) If an entitled person makes demand for payment under subsection (10) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the financial interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay in cash to each the entitled person the amount the entitled person demanded pursuant to subsection (10)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's principal office is located. If the limited liability company is a foreign limited liability company, it shall commence the proceeding in the county in this state where the principal office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

(c) The limited liability company shall make all entitled persons whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their interests, and all parties must be served with a copy of the complaint. Nonresidents may be served as otherwise provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (11)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The entitled persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each entitled person made a party to the proceeding is entitled to judgment: (i) for the amount, if any, by which the court finds the fair value of the entitled person's financial interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the entitled person for such financial interests; or (ii) for the fair value, plus interest at the legal rate, of the entitled person's financial interests for which the limited liability company elected to withhold payment under subsection (9) of this section.

(12) **Court costs and counsel fees.**

(a) The court in an appraisal proceeding commenced under subsection (11) of this section shall determine all costs of the proceeding including the

reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the entitled persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all entitled persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsection (4), (6), (8) or (9) of this section; or

(ii) Against either the limited liability company or an entitled person demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(c) If the court in an appraisal proceeding finds that the services of counsel for any entitled person were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the entitled persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsection (8), (9) or (10) of this section, the entitled person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

HISTORY: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 111, eff from and after Jan. 1, 2013.

Editor's Notes — This section is set out above to correct errors in the section as it appears in the 2013 Replacement Volume 18 by adding the following subsection designations: (3), (5), (7), (8), (9), (10), (11) and (12).

§ 79-29-233. Action on an agreement to sell, lease, exchange or otherwise dispose of assets.

JUDICIAL DECISIONS

1. Acceptance of offer.

Record reflected that an LLC lacked the necessary authority to accept appellee's offer to accept a deed in lieu of foreclosure. Accordingly, the LLC could not validly accept appellee's offer, and there was no agreement for the chancellor to enforce. Coast Plaza LLC v. RCH Capital LLC, 281 So. 3d 1125, 2019 Miss. App. LEXIS 266 (Miss. Ct. App. 2019).

ARTICLE 3.

MEMBERS.

§ 79-29-301. Admission of members.

JUDICIAL DECISIONS

II. Under Former § 79-29-301.

6. Not a member.

Real property buyer was not a member of a limited liability company (LLC) because, under the unambiguous terms of an operating agreement, a $500,000 contribution was required to become a member; under former version of Miss. Code Ann. § 79-29-301, the LLC agreement did not have to be in force at the time of filing a certificate of formation. Moreover, all potential members of the LLC did not have to be accounted for at the time of the certificate's filing. Kilpatrick v. White Hall on MS River, LLC, 207 So. 3d 1241, 2016 Miss. LEXIS 83 (Miss. 2016).

§ 79-29-303. Withdrawal of member and expulsion of member.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Governance rights.

1. In general.

Members 3 and 4 could not expel members 1 and 2 (M1 and M2) under a limited liability company's (LLC) operating agreement for their alleged fraud, bad acts, or abandonment of their management duties, and as M1 and M2's membership had not been withdrawn under this section, M1 and M2 were still members of the LLC. In re Mid-South Bus. Assocs., LLC, 555 B.R. 565, 2016 Bankr. LEXIS 3383 (Bankr. N.D. Miss. 2016).

2. Governance rights.

Chancery court properly granted motions for summary judgment and declaratory judgment filed by a law firm and its individual members in a former member's action for interpretation of the firm's partnership agreements and related documents because, although the former member's withdrawal from the firm severed his statutory governance rights, he continued to have governance rights as outlined in and permitted by the dispute-resolution provision of the supplement agreement, including his participation in a majority vote on "any dispute or decision related to this agreement," and he was bound by the terms of the dispute-resolution provision and the resulting joint resolution. Sledge v. Grenfell Sledge & Stevens, PLLC, 263 So. 3d 655, 2018 Miss. LEXIS 504 (Miss. 2018).

ARTICLE 8.

DISSOLUTION.

§ 79-29-809. Winding-up.

JUDICIAL DECISIONS

1. Title to real property.

Real properties listed as being owned by debtor's LLC in a prior bankruptcy were not property of debtor's Chapter 13 estate

under 11 U.S.C.S. § 541(a)(1) because under the statute debtor had not automatically obtained legal title to the properties upon the LLC's dissolution, so the properties were not protected from foreclosure. Netterville v. Planters Bank & Trust Co. (In re Netterville), — B.R. —, 2019 Bankr. LEXIS 2294 (Bankr. N.D. Miss. July 24, 2019).

§ 79-29-825. Reinstatement following administrative dissolution.

JUDICIAL DECISIONS

1. Reinstatement.

Limited liability company was not reinstated for the sole purpose of evading liability because it was reinstated after the homeowners filed their complaint; the statute is clear that the reinstatement relates back to the date of dissolution and any liability during this period is determined as if the dissolution never occurred. Brown v. Waldron, 186 So. 3d 955, 2016 Miss. App. LEXIS 115 (Miss. Ct. App. 2016).

§ 79-29-831. Effect of dissolution.

JUDICIAL DECISIONS

1. In general.

Although a hospice care provider was a limited liability company that was administratively dissolved, the provider's appeal of the Mississippi Division of Medicaid's decision to demand that unsupported claims be repaid was allowed to proceed because the provider, by further appealing the decision, was not maintaining an action against Medicaid, but rather, continued to defend itself against Medicaid's administrative decision. Genesis Hospice Care, LLC v. Miss. Div. of Medicaid, 267 So. 3d 779, 2019 Miss. LEXIS 160 (Miss. 2019).

ARTICLE 10.

FOREIGN LIMITED LIABILITY COMPANIES.

Sec.

79-29-1021. Administrative revocation of registration of foreign limited liability company.

§ 79-29-1013. Transaction of business without registration.

JUDICIAL DECISIONS

1. Capacity to sue.

Circuit court properly dismissed a complaint filed by a Mississippi limited liability company (LLC) and denied its motion to substitute the parties because there were two LLCs—one was registered as a Louisiana LLC and the other as a Mississippi LLC—and, while the Mississippi LLC had capacity to file suit, it lacked standing to assert the breach of contract claim where it was not a party to the subject contract with the city, was not a legal entity when the work was performed under the contract, and was not a real party in interest that could be substituted as a party, and the Louisiana LLC had no statutory authority to file suit until years after the applicable three-year statute-of-

limitations period had run. Nungesser Indus. LLC v. City of Jackson, — So. 3d —, 2019 Miss. App. LEXIS 587 (Miss. Ct. App. Dec. 10, 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 296 (Miss. 2020).

Issue of whether a limited liability company (LLC) had standing had been waived, expressly or impliedly, by the parties because the question was not an issue of standing but of capacity, and the LLC's lack of capacity had been cured; the LLC reregistered as a foreign limited liability company in good standing with the Mississippi Secretary of State, and all parties accommodated re-registration pending appeal and consented to supplement the record regarding the LLC's continued existence. Jourdan River Estates, LLC v. Favre, 278 So. 3d 1135, 2019 Miss. LEXIS 345 (Miss. 2019).

§ 79-29-1021. Administrative revocation of registration of foreign limited liability company.

(1) The Secretary of State may commence a proceeding under Section 79-29-1023 to administratively revoke the registration of a foreign limited liability company authorized to transact business in this state if:

(a) The foreign limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The foreign limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The foreign limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The foreign limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;

(e) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or ceased to exist as the result of a merger;

(f) The Department of Revenue notifies the Secretary of State that the limited liability company is delinquent in any payments or tax owed by the limited liability company to the State of Mississippi; or

(g) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company to the Secretary of State pursuant to this chapter.

(2) The Secretary of State may not administratively revoke a registration of a foreign limited liability company unless the Secretary of State sends the foreign limited liability company notice of the administrative revocation under Section 79-29-1023, at least sixty (60) days before its effective date, by a record addressed to its registered agent, or to the foreign limited liability company if the foreign limited liability company fails to appoint and maintain a proper agent in this state. The notice must specify the cause for the administrative revocation of the registration. The authority of the foreign limited liability company to transact business in this state ceases on the effective date of the administrative revocation unless the foreign limited liability company cures the failure before that date.

HISTORY: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011; Laws, 2020, ch. 341, § 1, eff from and after passage (approved June 23, 2020).

Amendment Notes — The 2020 amendment, effective June 23, 2020, in (1), added (f), redesignated former (f) as (g), and made a related change.

§ 79-29-1023. Administrative revocation of registration, procedure and effect.

JUDICIAL DECISIONS

1. Capacity to sue.

Issue of whether a limited liability company (LLC) had standing had been waived, expressly or impliedly, by the parties because the question was not an issue of standing but of capacity, and the LLC's lack of capacity had been cured; the LLC reregistered as a foreign limited liability company in good standing with the Mississippi Secretary of State, and all parties accommodated re-registration pending appeal and consented to supplement the record regarding the LLC's continued existence. Jourdan River Estates, LLC v. Favre, 278 So. 3d 1135, 2019 Miss. LEXIS 345 (Miss. 2019).

ARTICLE 12.

MISCELLANEOUS.

Sec.

79-29-1203. Fees; funding of Office of Secretary of State expenses; deposit of user charges and fees authorized under this section into State General Fund and use of monies so deposited.

§ 79-29-1203. Fees; funding of Office of Secretary of State expenses; deposit of user charges and fees authorized under this section into State General Fund and use of monies so deposited.

(1) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Mississippi:

(a) Filing of Reservation of Limited Liability Company Name or Transfer or Cancellation of Reservation, Twenty-five Dollars ($25.00).

(b) [Reserved]

(c) [Reserved]

(d) Filing of Certificate of Formation, Fifty Dollars ($50.00).

(e) Filing of Amendment to Certificate of Formation, Fifty Dollars ($50.00).

(f) Filing of Certificate of Dissolution, Fifty Dollars ($50.00).

(g) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars ($250.00) and Ten Dollars ($10.00) for each day, but not to exceed a total of One Thousand Dollars ($1,000.00) for

each year the foreign limited liability company transacts business in this state without a registration as a foreign limited liability company.

(h) Filing of Certificate of Correction, Fifty Dollars ($50.00).

(i) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Fifty Dollars ($50.00).

(j) Filing of an Annual Report of Domestic Limited Liability Company, (no fee).

(k) Filing of an Annual Report of Foreign Limited Liability Company, to be deposited in the Elections Support Fund created in Section 23-15-5, Two Hundred Fifty Dollars ($250.00).

(*l*) Certificate of Administrative Dissolution, (no fee).

(m) Filing of Application for Reinstatement Following Administrative Dissolution, Fifty Dollars ($50.00).

(n) Certificate of Administrative Revocation of Authority to Transact Business, (no fee).

(o) Filing of Application for Reinstatement Following Administrative Revocation, One Hundred Dollars ($100.00).

(p) Certificate of Reinstatement Following Administrative Dissolution, (no fee).

(q) Certificate of Reinstatement Following Administrative Revocation of Authority to Transact Business, (no fee).

(r) Filing of Certificate of Revocation of Dissolution, Twenty-five Dollars ($25.00).

(s) Application for Certificate of Existence or Authorization, Twenty-five Dollars ($25.00).

(t) Any other document required or permitted to be filed under this chapter, Twenty-five Dollars ($25.00).

(2) The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) each time process is served on the Secretary of State under Section 79-29-101 et seq.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

(a) One Dollar ($1.00) a page for copying; and

(b) Ten Dollars ($10.00) for the certificate.

(4) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees set forth in this section or provide for discounts of fees as set forth in this section to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

(5) From and after July 1, 2016, the expenses of the Office of Secretary of State shall be defrayed by line item appropriation from the State General Fund

to the Office of Secretary of State and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer, and shall not be authorized for expenditure by the Secretary of State to reimburse or otherwise defray the expenses of any office administered by the Secretary of State.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1994, ch. 402, § 86; Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 368, § 1; Laws, 2012, ch. 382, § 122; Laws, 2014, ch. 468, § 8; Laws, 2015, ch. 349, § 1; Laws, 2017, 1st Ex Sess, ch. 7, § 6, eff from and after passage (approved June 23, 2017).

Amendment Notes — The 2014 amendment, in (1)(a), inserted "or Cancellation" following "Company Name or Transfer."

The 2015 amendment deleted the former repealer provision in (5), which read "This section shall stand repealed on July 1, 2015."

The 2017 amendment, effective June 23, 2017, added (5) and (6).

CHAPTER 35.

THE MISSISSIPPI REGISTERED AGENTS ACT

Sec.

79-35-19. Designation of registered agent without consent; penalties and liablilties.

§ 79-35-13. Service of process on entities.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. Service improper.
2. Service proper.

I. Under Current Law.

1. Service improper.

Circuit court erred in denying a limited liability company's (LLC) motion to set aside a default judgment because service through the Secretary of State was not proper since the corporation did not exercise reasonable diligence in attempting to serve the LLC's members prior to attempting service through the Secretary of State; the LLC did not waive its objection to improper service by entering an appearance or by participating in the judgment debtor exam because it was not defending the case. S&M Trucking, LLC v. Rogers Oil Co. of Columbia, Inc., 195 So. 3d 217, 2016 Miss. App. LEXIS 368 (Miss. Ct. App. 2016).

2. Service proper.

Circuit court had jurisdiction over a passenger's action against an airline because service of process was proper and sufficient; service of process on the airline's registered agent was sufficient to give the circuit court jurisdiction over the airline because the complaint specifically identified the former address of the airline's principal place of business, and the complaint should have dispelled any confusion as to the true identity of the airline. United Airlines, Inc. v. McCubbins, 262 So. 3d 536, 2018 Miss. App. LEXIS 188

(Miss. Ct. App. 2018), cert. denied, 260 So. 3d 797, 2019 Miss. LEXIS 46 (Miss. 2019).

§ 79-35-15. Jurisdiction and venue.

JUDICIAL DECISIONS

1. Venue.

Registered Agents Act effectively makes the location of a corporation's registered agent irrelevant to the venue analysis; because the Registered Agents Act excludes consideration of the location of a corporation's registered agent from the question of venue, the Mississippi Consumer Protection Act's venue statute provides no choice of venue for foreign corporations. Purdue Pharma L.P. v. State, 256 So. 3d 1, 2018 Miss. LEXIS 415 (Miss. 2018).

Registered Agents Act overruled Penn Nat'l Gaming, Inc. v. Ratliff, 954 So. 2d 427 (Miss. 2007) and its holding that a non-resident defendant "resides" in the county where its agent for service of process is located; as the statute provides, the address of a registered agent does not determine venue. Purdue Pharma L.P. v. State, 256 So. 3d 1, 2018 Miss. LEXIS 415 (Miss. 2018).

General venue statute for chancery court did not apply in the State's action against pharmaceutical manufacturers because the location of a foreign corporation's registered agent was irrelevant to determine venue; because the general venue statute for chancery court did not apply, and the general venue statute provided criteria that did not rely on the location of a registered agent, the trial court's reliance on the general venue statute was appropriate. Purdue Pharma L.P. v. State, 256 So. 3d 1, 2018 Miss. LEXIS 415 (Miss. 2018).

§ 79-35-19. Designation of registered agent without consent; penalties and liablilties.

In addition to other penalties, a person commits an offense if the person makes a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's written consent. The following penalties and liabilities shall apply with respect to a false statement in a registered agent filing made under this chapter that names a person the registered agent of a represented entity without the person's consent:

(1) Section 79-4-1.29 (Domestic Corporations); Section 79-4-15.30 (Foreign Corporations); Section 79-11-123 (Domestic Nonprofit Corporations); Section 79-11-385 (Foreign Nonprofit Corporations); Section 79-29-207 (Domestic Limited Liability Companies); Section 79-29-1019 (Foreign Limited Liability Companies); Section 79-13-1003 (Limited Liability Partnerships); Section 79-13-1106 (Foreign Limited Liability Partnerships); Section 79-15-129 (Foreign Investment Trusts); and Section 79-16-27 (Foreign Business Trusts).

(2) The Secretary of State may commence a proceeding to administratively dissolve the domestic entity or to revoke the foreign entity's certificate of authority or similar certificate as prescribed by Section 79-4-14.20 (Corporations); Section 79-4-15.30 (Foreign Corporations); Section 79-11-347 (Nonprofit Corporations); Section 79-11-385 (Foreign Nonprofit Corporations); Section 79-13-1003 (Limited Liability Partnerships); Section 79-13-

1106 (Foreign Limited Liability Partnerships); Section 79-29-809 (Limited Liability Companies); Section 79-29-1011 (Foreign Limited Liability Companies); Section 79-14-811 (Limited Partnerships); Section 79-14-1010 (Foreign Limited Partnerships); Section 79-15-129 (Foreign Investment Trusts); and Section 79-16-27 (Foreign Business Trusts). Any entity that is administratively dissolved or whose certificate of authority is revoked pursuant to this paragraph shall not be reinstated unless it complies with the applicable statutory reinstatement requirements and unless it provides to the Secretary of State with its application for reinstatement a statement of appointment of registered agent signed by its appointed registered agent and an additional reinstatement fee of Two Hundred Fifty Dollars ($250.00), in addition to the applicable statutory reinstatement fee.

HISTORY: Laws, 2012, ch. 382, § 19; Laws, 2015, ch. 453, § 5, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment deleted "Section 79-14-207 (Domestic Limited Partnerships)" preceding "Section 79-15-129 (Foreign Investment Trusts)" near the end of (1); and in (2), substituted "Section 79-14-811" for "Section 79-14-809" and "Section 79-14-1010" for "Section 79-14-910" near the end of the first sentence.

CHAPTER 37.

MISSISSIPPI ENTITY CONVERSION AND DOMESTICATION ACT

Article 1.	General Provisions.	79-37-101
Article 4.	Conversion.	79-37-401
Article 5.	Domestication.	79-37-501
Article 6.	Miscellaneous Provisions.	79-37-601

ARTICLE 1.

GENERAL PROVISIONS.

Sec.

79-37-101. Short title.
79-37-102. Definitions.
79-37-103. Relationship of chapter to other laws.
79-37-104. Required notice or approval.
79-37-105. Status of filings.
79-37-106. Nonexclusivity.
79-37-107. Reference to external facts.
79-37-108. Alternative means of approval of transactions.
79-37-109. Appraisal rights.
79-37-110. [Reserved.].
79-37-111. Requirements for documents.
79-37-112. Filing, service, and copying fees.
79-37-113. Effective time and date of document.
79-37-114. Correcting filed document.
79-37-115. Filing duty of Secretary of State.

Sec.
79-37-116. Appeal from refusal to file a document.
79-37-117. Evidentiary effect of copy of filed document.
79-37-118. Penalty for signing false document.
79-37-119. Powers of Secretary of State.

§ 79-37-101. Short title.

This chapter shall be known and may be cited as the Mississippi Entity Conversion and Domestication Act.

HISTORY: Laws, 2014, ch. 399, § 1, eff from and after Jan. 1, 2015.

§ 79-37-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) [Reserved]

(2) [Reserved]

(3) "Approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under the entity's organic rules, organic law, and other law to:

(A) Propose a transaction subject to this chapter;

(B) Adopt and approve the terms and conditions of the transaction; and

(C) Conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(4) "Conversion" means a transaction authorized by Article 4 of this chapter.

(5) "Converted entity" means the converting entity as it continues in existence after a conversion.

(6) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 79-37-403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(7) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(8) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(9) "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

(10) "Domesticating entity" means the domestic entity that approves a plan of domestication pursuant to Section 79-37-503 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of formation.

(11) "Domestication" means a transaction authorized by Article 5 of this chapter.

(12) "Entity":

(A) Means:

(i) A business corporation;

(ii) A nonprofit corporation;

(iii) A general partnership, including a limited liability partnership;

(iv) A limited partnership, including a limited liability limited partnership;

(v) A limited liability company;

(vi) [Reserved];

(vii) [Reserved];

(viii) [Reserved];

(ix) A statutory trust, business trust, or common-law business trust;

(x) An agricultural association, including an agricultural co-operative marketing association; or

(xi) Any other person that has:

(I) A legal existence separate from any interest holder of that person; or

(II) The power to acquire an interest in real property in its own name; and

(B) Does not include:

(i) An individual;

(ii) A trust with a predominantly donative purpose or a charitable trust;

(iii) An association or relationship that is not an entity listed in subparagraph (A) and is not a partnership under the rules stated in Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;

(iv) A decedent's estate; or

(v) A government or a governmental subdivision, agency, or instrumentality.

(13) "Filing entity" means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(14) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(15) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for or consent to the election of the governors of the entity; or

(C) Receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(16) "Governor" means:

(A) A director of a business corporation;

(B) A director or trustee of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A manager of a manager-managed limited liability company;

(F) A member of a member-managed limited liability company;

(G) [Reserved];

(H) [Reserved];

(I) [Reserved];

(J) A trustee of a statutory trust, business trust, or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(17) "Interest" means:

(A) A share in a business corporation;

(B) A membership in a nonprofit corporation;

(C) A partnership interest in a general partnership;

(D) A partnership interest in a limited partnership;

(E) A membership interest in a limited liability company;

(F) [Reserved];

(G) [Reserved];

(H) [Reserved];

(I) A beneficial interest in a statutory trust, business trust, or common-law business trust;

(J) A membership in an agricultural association, including an agricultural co-operative marketing association; or

(K) A governance interest or distributional interest in any other type of unincorporated entity.

(18) [Reserved]

(19) "Interest holder" means:

(A) A shareholder of a business corporation;

(B) A member of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A limited partner of a limited partnership;

(F) A member of a limited liability company;

(G) [Reserved];

(H) [Reserved];

(I) [Reserved];

(J) A beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust;

(K) A member of an agricultural association, including an agricultural co-operative marketing association; or

(L) Any other direct holder of an interest.

(20) "Interest holder liability" means:

(A) Personal liability for a liability of an entity that is imposed on a person:

(i) Solely by reason of the status of the person as an interest holder; or

(ii) By the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(21) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(22) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(23) [Reserved]

(24) [Reserved]

(25) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(26) "Organic rules" means the public organic record and private organic rules of an entity.

(27) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, agricultural association, agricultural co-operative marketing association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(28) "Plan" means a plan of conversion or plan of domestication.

(29) "Plan of conversion" means a plan under Section 79-37-402.

(30) "Plan of domestication" means a plan under Section 79-37-502.

(31) [Reserved]

(32) [Reserved]

(33) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic record, if any. The term includes:

(A) The bylaws of a business corporation;

(B) The bylaws of a nonprofit corporation;

(C) The partnership agreement of a general partnership;

(D) The partnership agreement of a limited partnership;

(E) The operating agreement of a limited liability company;

(F) [Reserved];

(G) [Reserved];

(H) [Reserved];

(I) The bylaws of an agricultural association, including an agricultural co-operative marketing association; and

(J) The trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(34) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(35) "Protected agreement" means:

(A) A record evidencing indebtedness and any related agreement in effect on January 1, 2015;

(B) An agreement that is binding on an entity on January 1, 2015;

(C) The organic rules of an entity in effect on January 1, 2015; or

(D) An agreement that is binding on any of the governors or interest holders of an entity on January 1, 2015.

(36) "Public organic record" means the record the filing of which by the Secretary of State is required to form an entity and any amendment to or restatement of that record. The term includes:

(A) The articles of incorporation of a business corporation;

(B) The articles of incorporation of a nonprofit corporation;

(C) The certificate of limited partnership of a limited partnership;

(D) The certificate of formation of a limited liability company;

(E) [Reserved];

(F) [Reserved];

(G) The articles of association of an agricultural association, including an agricultural co-operative marketing association; and

(H) The certificate of trust of a statutory trust or similar record of a business trust.

(37) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(38) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the Secretary of State.

(39) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(40) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(41) "Statement of conversion" means a statement under Section 79-37-405.

(42) "Statement of domestication" means a statement under Section 79-37-505.

(43) [Reserved]

(44) [Reserved]

(45) [Reserved]

(46) "Transfer" includes:

(A) An assignment;

(B) A conveyance;

(C) A sale;

(D) A lease;

(E) An encumbrance, including a mortgage or security interest;

(F) A gift; and

(G) A transfer by operation of law.

(47) "Type of entity" means a generic form of entity:

(A) Recognized at common law; or

(B) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

HISTORY: Laws, 2014, ch. 399, § 2, eff from and after Jan. 1, 2015.

§ 79-37-103. Relationship of chapter to other laws.

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(c) A transaction effected under this chapter may not create or impair a right, duty, or obligation of a person under the statutory law of this state relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic converting or domesticating business corporation unless the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law.

HISTORY: Laws, 2014, ch. 399, § 3, eff from and after Jan. 1, 2015.

§ 79-37-104. Required notice or approval.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to a conversion or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the appropriate court specifying the disposition of the property.

HISTORY: Laws, 2014, ch. 399, § 4, eff from and after Jan. 1, 2015.

§ 79-37-105. Status of filings.

A filing under this chapter signed by a domestic entity becomes part of the

public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

HISTORY: Laws, 2014, ch. 399, § 5, eff from and after Jan. 1, 2015.

§ 79-37-106. Nonexclusivity.

The fact that a transaction under this chapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this chapter.

HISTORY: Laws, 2014, ch. 399, § 6, eff from and after Jan. 1, 2015.

§ 79-37-107. Reference to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

HISTORY: Laws, 2014, ch. 399, § 7, eff from and after Jan. 1, 2015.

§ 79-37-108. Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this chapter by the affirmative vote or consent of all its interest holders satisfies the requirements of this chapter for approval of the transaction.

HISTORY: Laws, 2014, ch. 399, § 8, eff from and after Jan. 1, 2015.

§ 79-37-109. Appraisal rights.

(a) An interest holder of a domestic converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) The organic law permits the organic rules to limit the availability of appraisal rights; and

(2) The organic rules provide such a limit or elimination.

(b) An interest holder of a domestic converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this chapter to the extent provided in:

(1) The entity's organic rules;

(2) The plan; or

(3) The case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, Article 13 of the Mississippi Business Corporation Act applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

HISTORY: Laws, 2014, ch. 399, § 9, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (c) by substituting "Article 13 of the Mississippi Business Corporation Act" for "Chapter 13 of the Mississippi Business Corporation Act." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 79-37-110. [Reserved].

[Reserved for future codification purposes.]

HISTORY: Laws, 2014, ch. 399, § 10, eff from and after Jan. 1, 2015.

§ 79-37-111. Requirements for documents.

(a) To be entitled to filing by the Secretary of State, a document must satisfy the following requirements and the requirements of any other provision of this chapter that adds to or varies these requirements:

(1) This chapter requires or permits filing the document in the Office of the Secretary of State.

(2) The document contains the information required by this chapter and may contain other information.

(3) The document is in a record.

(4) The document is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(5) The document is signed:

(A) By an officer or director of a domestic or foreign corporation;

(B) By a person authorized by a domestic or foreign entity that is not a corporation; or

(C) If the entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The document must state the name and capacity of the person that signed it.

(7) The document must be delivered to the Office of the Secretary of State for filing in the format and in the manner required by the Secretary of State.

(b) When a document is delivered to the Office of the Secretary of State for filing, the correct filing fee must be paid or provision for payment made in a manner permitted by the Secretary of State.

HISTORY: Laws, 2014, ch. 399, § 11; Laws, 2017, ch. 308, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment, in (a), inserted "or director" in (5)(A), and added "in the format and in the manner required by the Secretary of State" at the end of (7).

§ 79-37-112. Filing, service, and copying fees.

(a) The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(b) The Secretary of State shall collect the following fees for copying and certifying the copy of any document filed under this chapter:

(1) One Dollar ($1.00) a page for copying; and

(2) Ten Dollars ($10.00) for the certificate.

(c) The Secretary of State shall collect the following fees when the documents described are delivered for filing:

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) [Reserved]

(5) Statement of conversion $50.00

(6) Statement of abandonment of conversion $25.00

(7) Statement of domestication $50.00

(8) Statement of abandonment of domestication $25.00

HISTORY: Laws, 2014, ch. 399, § 12, eff from and after Jan. 1, 2015.

§ 79-37-113. Effective time and date of document.

Except as provided in Section 79-37-114, a document accepted for filing is effective:

(1) At the date and time of filing, as evidenced by the means used by the Secretary of State for recording the date and time of filing;

(2) At the time specified in the document as its effective time on the date it is filed;

(3) At a specified delayed effective time and date if permitted by this chapter; or

(4) If a delayed effective date but no time is specified, at the close of business on the date specified.

HISTORY: Laws, 2014, ch. 399, § 13, eff from and after Jan. 1, 2015.

§ 79-37-114. Correcting filed document.

(a) A domestic or foreign entity may correct a document filed by the Secretary of State within one hundred twenty (120) days of the filing if:

(1) The document contains an inaccuracy;

(2) The document was defectively signed; or

(3) The electronic transmission of the document to the Secretary of State was defective.

(b) A document is corrected by filing with the Secretary of State a statement of correction that:

(1) Describes the document to be corrected and states its filing date or has attached a copy of the document;

(2) Specifies the inaccuracy or defect to be corrected; and

(3) Corrects the inaccuracy or defect.

(c) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

HISTORY: Laws, 2014, ch. 399, § 14; Laws, 2017, ch. 308, § 2, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "within one hundred twenty (120) days" for "within sixty (60) days" in the introductory paragraph of (a).

§ 79-37-115. Filing duty of Secretary of State.

(a) A document delivered to the Office of the Secretary of State for filing that satisfies the requirements of Section 79-37-111 must be filed by the Secretary of State.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgement of the date and time of filing.

(c) If the Secretary of State refuses to file a document, the Secretary of State shall return the document to the domestic or foreign entity or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The duty of the Secretary of State to file documents under this section is ministerial. The filing or refusal to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

HISTORY: Laws, 2014, ch. 399, § 15, eff from and after Jan. 1, 2015.

§ 79-37-116. Appeal from refusal to file a document.

(a) If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may

appeal the refusal within thirty (30) days after the return of the document to the Chancery Court of the First Judicial District of Hinds County, Mississippi. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the Secretary of State for the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

HISTORY: Laws, 2014, ch. 399, § 16; Laws, 2017, ch. 308, § 3, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment rewrote the first sentence of (a), which read: "If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may appeal the refusal within thirty (30) days after the return of the document to the chancery court of the county where the entity's principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the entity does not have a principal office in this state."

§ 79-37-117. Evidentiary effect of copy of filed document.

A filed-stamped copy from the Secretary of State conclusively establishes that the original document is on file with the Secretary of State.

HISTORY: Laws, 2014, ch. 399, § 17, eff from and after Jan. 1, 2015.

§ 79-37-118. Penalty for signing false document.

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed One Thousand Dollars ($1,000.00).

HISTORY: Laws, 2014, ch. 399, § 18, eff from and after Jan. 1, 2015.

§ 79-37-119. Powers of Secretary of State.

The Secretary of State has the power reasonably necessary to perform the duties required by this chapter and adopt rules and regulations for enforcement.

HISTORY: Laws, 2014, ch. 399, § 19, eff from and after Jan. 1, 2015.

ARTICLE 2.
[RESERVED].

ARTICLE 3.
[RESERVED].

ARTICLE 4.
CONVERSION.

Sec.
79-37-401. Conversion authorized.
79-37-402. Plan of conversion.
79-37-403. Approval of conversion.
79-37-404. Amendment or abandonment of plan of conversion.
79-37-405. Statement of conversion; effective date.
79-37-406. Effect of conversion.

§ 79-37-401. Conversion authorized.

(a) A charitable organization as defined in Section 79-11-501 may not convert under this Article 4.

(b) By complying with this article, a domestic entity may become:

(1) A domestic entity that is a different type of entity; or

(2) A foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation and the domestic entity has complied with Article 5 of this chapter.

(c) By complying with the provisions of this article applicable to foreign entities, a foreign entity may become a domestic entity that is a different type of entity if the conversion is authorized by the law of the foreign entity's jurisdiction of formation and the foreign entity has first domesticated to this state under Article 5 of this chapter.

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2015.

HISTORY: Laws, 2014, ch. 399, § 20; Laws, 2017, ch. 308, § 4, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added (a) and redesignated the remaining subsections accordingly; added "and the domestic entity has complied with Article 5 of this chapter" at the end of (b)(2); and added "and the foreign entity has first domesticated to this state under Article 5 of this chapter."

§ 79-37-402. Plan of conversion.

(a) A domestic entity may convert to a different type of entity under this

article by approving a plan of conversion. The plan must be in a record and contain:

(1) The name and type of entity of the converting entity;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) The manner of converting the interests in the converting entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) The proposed public organic record of the converted entity if it will be a filing entity;

(5) The full text of the private organic rules of the converted entity which are proposed to be in a record;

(6) The other terms and conditions of the conversion; and

(7) Any other provision required by the law of this state or the organic rules of the converting entity.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

HISTORY: Laws, 2014, ch. 399, § 21, eff from and after Jan. 1, 2015.

§ 79-37-403. Approval of conversion.

(a) A plan of conversion is not effective unless it has been approved:

(1) By a domestic converting entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) If its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the conversion were a merger;

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or

(C) By all of the interest holders of the entity entitled to vote on or consent to any matter if in the case of any entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a conversion or a merger; and

(2) In a record, by each interest holder of a domestic converting entity which will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

(A) The organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(B) The interest holder voted for or consented in a record to that

provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

HISTORY: Laws, 2014, ch. 399, § 22, eff from and after Jan. 1, 2015.

§ 79-37-404. Amendment or abandonment of plan of conversion.

(a) A plan of conversion of a domestic converting entity may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) The public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the Secretary of State for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) The name of the converting entity;

(2) The date on which the statement of conversion was filed by the Secretary of State; and

(3) A statement that the conversion has been abandoned in accordance with this section.

HISTORY: Laws, 2014, ch. 399, § 23, eff from and after Jan. 1, 2015.

§ 79-37-405. Statement of conversion; effective date.

(a) A statement of conversion must be signed on behalf of the converting entity and delivered to the Secretary of State for filing.

(b) A statement of conversion must contain:

(1) The name, jurisdiction of formation, and type of entity of the converting entity;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) If the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;

(4) If the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this article or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation; copies of the conversion documents from its jurisdiction of formation must be filed;

(5) If the converted entity is a domestic filing entity, its public organic record, as an attachment;

(6) If the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) If the converted entity is a foreign entity, a mailing address to which the Secretary of State may send any process served on the Secretary of State pursuant to Section 79-37-406(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A statement of conversion is effective on the date and time of filing or the later date and time specified in the statement of conversion.

(f) If the converted entity is a domestic entity, the conversion is effective when the statement of conversion is effective. If the converted entity is a foreign entity, the conversion is effective on the later of:

(1) The date and time provided by the organic law of the converted entity; or

(2) When the statement is effective.

HISTORY: Laws, 2014, ch. 399, § 24; Laws, 2017, ch. 308, § 5, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added "copies of the conversion documents from its jurisdiction of formation must be filed" at the end of (b)(4); and deleted former (e), which read: "A plan of conversion that is signed by a domestic converting entity and meets all the requirements of subsection (b) may be delivered to the Secretary of State for filing instead of a statement of conversion and on filing has

the same effect. If a plan of conversion is filed as provided in this subsection, references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection" and redesignated the remaining subsections accordingly.

§ 79-37-406. Effect of conversion.

(a) When a conversion becomes effective:

(1) The converted entity is:

(A) Organized under and subject to the organic law of the converted entity; and

(B) The same entity without interruption as the converting entity;

(2) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) If a converted entity is a filing entity, its public organic record is effective;

(7) If the converted entity is a limited liability partnership, its statement of qualification is effective;

(8) The private organic rules of the converted entity which are to be in a record, if any, approved as part of the plan of conversion are effective; and

(9) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 79-37-109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective.

(2) The person does not have interest holder liability under the organic law of the domestic converting entity for any debt, obligation, or other liability that arises after the conversion becomes effective.

(3) The organic law of the domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(f) If the converting entity is a registered foreign entity, its registration to do business in this state is amended to reflect its new status when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

HISTORY: Laws, 2014, ch. 399, § 25; Laws, 2017, ch. 308, § 6, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted "is amended to reflect its new status when" for "is canceled when" in (f).

ARTICLE 5.

DOMESTICATION.

Sec.

79-37-501. Domestication authorized.
79-37-502. Plan of domestication.
79-37-503. Approval of domestication.
79-37-504. Amendment or abandonment of plan of domestication.
79-37-505. Statement of domestication; effective date.
79-37-506. Effect of domestication.

§ 79-37-501. Domestication authorized.

(a) Except as otherwise provided in this section, by complying with this article, a domestic entity may become a domestic entity of the same type of entity in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this article applicable to foreign entities a foreign entity may become a domestic entity of the same type of entity in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after January 1, 2015.

HISTORY: Laws, 2014, ch. 399, § 26, eff from and after Jan. 1, 2015.

§ 79-37-502. Plan of domestication.

(a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) The name and type of entity of the domesticating entity;

(2) The name and jurisdiction of formation of the domesticated entity;

(3) The manner of converting the interests in the domesticating entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) The proposed public organic record of the domesticated entity if it is a filing entity;

(5) The full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) The other terms and conditions of the domestication; and

(7) Any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

HISTORY: Laws, 2014, ch. 399, § 27, eff from and after Jan. 1, 2015.

§ 79-37-503. Approval of domestication.

(a) A plan of domestication is not effective unless it has been approved:

(1) By a domestic domesticating entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) If its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the domestication were a merger;

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type merger; or

(C) By all of the interest holders of the entity entitled to vote on or consent to any matter if in the case of an entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a domestication or a merger; and

(2) In a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for debts, obligations, and other

liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) The organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) The interest holder consented in a record to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of formation.

HISTORY: Laws, 2014, ch. 399, § 28, eff from and after Jan. 1, 2015.

§ 79-37-504. Amendment or abandonment of plan of domestication.

(a) A plan of domestication of a domestic domesticating entity may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) The public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the entity, must be delivered to the Secretary of State for filing before the statement of domestication becomes effective. The statement of abandonment

takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) The name of the domesticating entity;

(2) The date on which the statement of domestication was filed by the Secretary of State; and

(3) A statement that the domestication has been abandoned in accordance with this section.

HISTORY: Laws, 2014, ch. 399, § 29, eff from and after Jan. 1, 2015.

§ 79-37-505. Statement of domestication; effective date.

(a) A statement of domestication must be signed by the domesticating entity and delivered to the Secretary of State for filing.

(b) A statement of domestication must contain:

(1) The name, jurisdiction of formation, and type of entity of the domesticating entity;

(2) The name and jurisdiction of formation of the domesticated entity;

(3) If the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;

(4) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this article or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(5) If the domesticated entity is a domestic filing entity, its public organic record, as an attachment;

(6) If the domesticated entity is a domestic limited liability partnership, its statement of qualification, as an attachment;

(7) If the domesticated entity is a foreign entity that is not a registered foreign entity, a mailing address to which the Secretary of State may send any process served on the Secretary of State pursuant to Section 79-37-506(e);

(8) If the domesticated entity is a foreign entity, a copy of the filed domestication documents from the new jurisdiction as an attachment; and

(9) If the domesticated entity is a domestic entity, a certificate of good standing or certificate of existence from its jurisdiction of formation that is issued less than one hundred eighty (180) days before filing under this section.

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of domestication that is signed by a domesticating domestic entity and meets all of the requirements of subsection (b) may be delivered to

the Secretary of State for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) A statement of domestication is effective on the date and time of filing or the later date and time specified in the statement of domestication.

(g) A domestication in which the domesticated entity is a domestic entity is effective when the statement of domestication is effective. A domestication in which the domesticated entity is a foreign entity is effective on the later of:

(1) The date and time provided by the organic law of the domesticated entity; or

(2) When the statement is effective.

HISTORY: Laws, 2014, ch. 399, § 30; Laws, 2017, ch. 308, § 7, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added (b)(8) and (9), and made related stylistic changes.

§ 79-37-506. Effect of domestication.

(a) When a domestication becomes effective:

(1) The domesticated entity is:

(A) Organized under and subject to the organic law of the domesticated entity; and

(B) The same entity without interruption as the domesticating entity;

(2) All property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) Except as otherwise provided by law or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) If the domesticated entity is a filing entity, its public organic record is effective;

(7) If the domesticated entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(8) The private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(9) The interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 79-37-109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective.

(2) A person does not have interest holder liability under the organic law of the domestic domesticating entity for any debt, obligation, or other liability that arises after the domestication becomes effective.

(3) The organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(f) If a domesticating entity is a registered foreign entity, the registration to do business in this state of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

HISTORY: Laws, 2014, ch. 399, § 31, eff from and after Jan. 1, 2015.

ARTICLE 6.

MISCELLANEOUS PROVISIONS.

Sec.

79-37-601. Consistency of application.
79-37-602. Relation to Electronic Signatures in Global and National Commerce Act.
79-37-603. Savings clause.

Sec.
79-37-604. Severability clause.

§ 79-37-601. Consistency of application.

In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2014, ch. 399, § 32, eff from and after Jan. 1, 2015.

§ 79-37-602. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

HISTORY: Laws, 2014, ch. 399, § 33, eff from and after Jan. 1, 2015.

§ 79-37-603. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2015.

HISTORY: Laws, 2014, ch. 399, § 34, eff from and after Jan. 1, 2015.

§ 79-37-604. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2014, ch. 399, § 35, eff from and after Jan. 1, 2015.